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ADVISING ON TITLE.

HINTS

AS TO

ADVISING ON TITLE

AND

PRACTICAL SUGGESTIONS FOR

PERUSING AND ANALYSING ABSTRACTS.

WITH

AN OUTLINE OF THE

LAW RELATING TO TITLE TO LAND

AND

Tables of Stamp Duties since 1815.

BY

WILLIAM HENRY GOVER, LL.B. (LOND.),

OF LINCOLN'S INN, BARRISTER-AT-LAW.

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PREFACE.

THE object of this Manual is to furnish suggestions for dealing with the questions usually arising on Abstracts of Title to Freeholds, Copyholds, and Leaseholds, and advising on the title shown thereby.

An outline of the Law relating to Title is given, and as only a forty-years' title need now in general be shown, the range of subjects considered has been limited accordingly. Points of practical importance to Purchasers are alone stated, and only the most recent of the reported cases bearing thereon are cited. Registered titles are considered separately.

A method of Tabular Analysis is suggested, which gives a comprehensive view of a title and shows at a glance the position of the legal estate and every equitable interest, thus lessening the risk of overlooking any incumbrance, and rendering it easier to resume the thread of the title after interruption.

The evidence usually required for verifying an Abstract is arranged alphabetically, and Tables of the principal Stamp Duties to which deeds relating to land have been subject since 1815 are given in the Appendix.

10, Old Square, Lincoln's Inn.
October, 1889.

CONTENTS.

CHAPTER IV.

TABLE OF CASES.

TABLE OF STATUTES.

ABBREVIATIONS.

Burton.....	Burton's Compendium of the Law of Real Property (8th ed.). 1856.
Cov.	Coventry's Conveyancer's Evidence. 1832.
Dart.....	Dart's Vendors & Purchasers (6th ed.). 1888.
Fisher	Fisher's Law of Mortgage (4th ed.). 1884.
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Lewin	Lewin's Law of Trusts (8th ed.). 1885.
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Pres.....	Preston's Abstracts of Title (2nd ed.). 1823–4.
Rob. Gav.	Robinson's Gavelkind (4th ed.). 1858.
Scriv.	Scriven's Law of Copyholds (6th ed.). 1892.
Seton	Seton's Decrees (4th ed.). 1877–79.
Shel. Insolv. ...	Shelford's Law of Insolvency. 1856.
Sug.	Sugden's Vendors & Purchasers (14th ed.). 1862.
Sug. Pow.	Sugden's Powers (8th ed.). 1861.
Tud. L. C.	Tudor's Leading Cases on Real Property (3rd ed.). 1879.
Wms. Ex.	Williams' Law of Executors (8th ed.). 1879.
Wms. R. P. ...	Williams' Law of Real Property (11th ed.). 1875.
Woolrych	Woolrych's Metropolitan Buildings Acts (2nd ed.). 1877.

ADVISING ON TITLE.

CHAPTER I.

PERUSAL OF ABSTRACT AND ANALYSIS.

Abstract.

On the purchase of freeholds, copyholds, or leaseholds, an abstract of title is usually delivered to the purchaser, with the object of showing that the vendor is entitled to the property and has power to convey it.

If the abstract is perfect, it will deduce the title from the date fixed by the contract or by law for its commencement, and disclose any incumbrances affecting it, setting out the material parts of all deeds, wills, and other documents relating to the title, and stating the facts on which it depends: 1 Pres. 42, 207.

Perusal.

In perusing the abstract on behalf of the purchaser, the conveyancer has to consider:—

(1.) Whether the instrument with which it commences is a sufficient root of title;

(2.) Whether the title is regularly deduced to the vendor without a break;

(3.) Whether the evidence of title is sufficient;

(4.) Whether the title shown enables the vendor to perform his contract: see 1 Pres. 208.

The contract or particulars and conditions of sale

Chap. I.

should be first read, and a note made of the property purchased, the estate to be conveyed, and the incumbrances (if any) to which the sale is subject: see 3 Pres. 205.

It is a good plan, before perusing the abstract, to glance over it to obtain a general idea as to the nature of the title and the persons through whom it is traced: see Sug. 413.

After each abstracted instrument is read, its effect should be considered, and an opinion formed as to the change thereby produced in the ownership of the property: see 3 Pres. 183.

It must generally be assumed that the deeds and documents are correctly abstracted; but where the form or language of the abstract points to an opposite conclusion, the suspected passage should be required to be set out *verbatim:* see 1 Pres. 117.

The conveyancer has to be constantly on his guard to see that he does not overlook:—

(1.) Defects in the form of abstracted instruments;

(2.) Defects in the estate expressed to be granted thereby;

(3.) Equities or breaches of trust disclosed;

(4.) Mortgages or other charges created by owners of the property, whether abstracted or merely noticed;

(5.) Succession duty;

(6.) Insufficient stamps;

(7.) Facts requiring proof.

Pencil notes may conveniently be made in the margin of the abstract for calling attention to these matters; and such notes will be found useful in framing requisitions.

Analysis.

Something more, however, is wanted to give a clear idea of the title shown; and to accomplish this object, a

tabular analysis of the title in the form shown on p. 4 is recommended.

The table is commenced by setting down the name of the owner at the date of the root of title; and each disposition or devolution of the estate is shown by drawing a line down from the name of the last owner and writing the new owner's name underneath.

Where the whole estate is conveyed absolutely, the transaction is denoted by a perpendicular line with the grantee's name at the foot.

Where the grantor does not part with his whole estate, the derivative interest is shown by carrying out the line to the right or left: in the case of a trust or term, to the right; in the case of a mortgage to the left.

When an interest is once created, every subsequent dealing with it must be traced in a similar manner.

When the legal estate and equitable interest are in different persons, they must be traced separately, a thick line being used to represent the legal estate, and a thin line to represent the equitable interest.

If the right to mortgage-money becomes separated from the estate, its devolution is shown by writing the amount by the side of the mortgagee's name and treating it as a separate interest.

Life estates and estates tail are denoted by writing "*for life*" or "*in tail*" under the name of the owner; and terms, by writing the number of years after the termor's name.

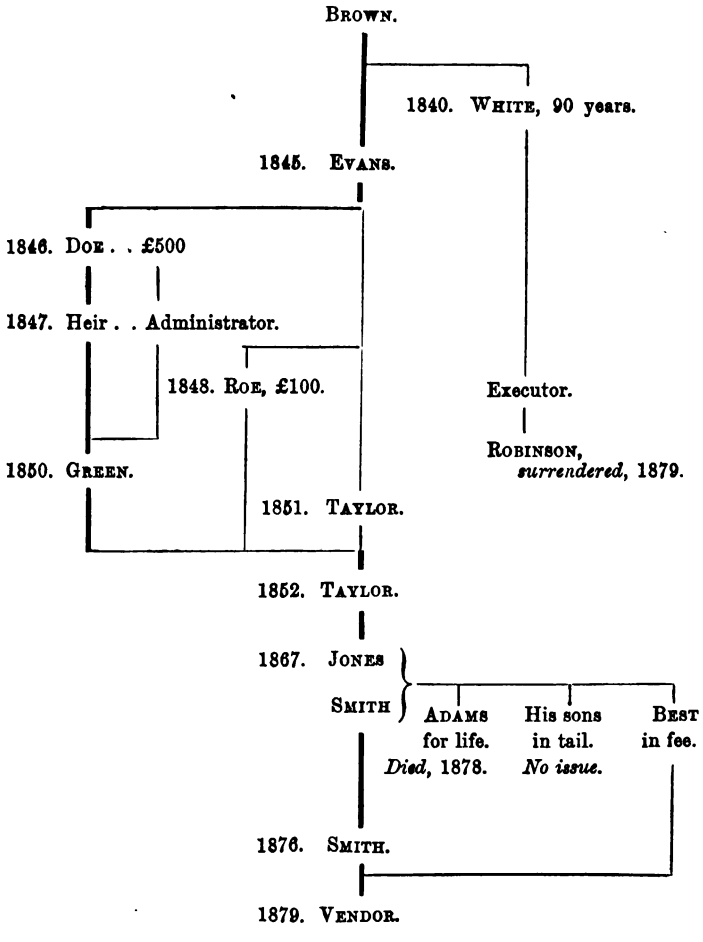
The death of a life tenant is shown by writing "*died*" with the date of death underneath his name.

So the surrender of a term is shown by writing "*surrendered*" under the name of the last owner.

If the title to different parts of the property is distinct, or if the property is divided into shares, a separate table must be used for each part or share.

Chap. I.

Example of tabular analysis :—



The title represented by the above table is as follows :—

Conveyance in fee by Brown to Evans in 1845, subject to a 90 years' lease to White.

First mortgage to Doe in 1846, for £500.

Second mortgage to Roe in 1848, for £100.

Death intestate of Doe in 1847.

Transfer of Doe's mortgage by his heir and administrator to Green in 1850.

Conveyance of the equity of redemption by Evans to Taylor in 1851.

Reconveyance of both mortgages to Taylor in 1852.

Will of Taylor in 1867, devising to Jones and Smith upon trust for Adams for life, and then for his first and other sons in tail, and in default of such issue to convey to Best in fee.

Death of Taylor in 1867.

Death of Jones in 1876.

Death of Adams in 1878 without issue.

Conveyance by Best and Smith to the vendor in 1879.

Surrender of the 90 years' term by the assign of White's executor.

For other methods of analysis, see 3 Pres. 9, 202

CHAPTER II.

COMMENCEMENT OF TITLE.

Chap. II.

THE first point requiring attention in an abstract is the date of the instrument with which it commences.

Commencement of title.

When the contract stipulates that the title shall commence with a specified instrument, however recent, no earlier title can be required: Conv. Act, 1881, s. 3 (3): see Dart, 387.

Where there is no stipulation on the point, the abstract should commence as follows:—

Freeholds and copyholds.

In the case of freeholds or copyholds, the first abstracted instrument should be at least 40 years old; see V. & P. Act, 1874, s. 1. In one case, where the abstract began with a conveyance 24 years old, which recited that the grantor was seised in fee, V.-C. Malins was of opinion that the recital was sufficient evidence, under s. 2 of the V. & P. Act, 1874, and that a 40 years' title could not be required: *Bolton* v. *L. S. Bd.*, 7 Ch. D. 766; *sed qu.*

In the case of enfranchised copyholds, both the freehold and copyhold title have to be shown; Sug. 372. The copyhold title should commence with an instrument 40 years old; but it is sufficient for the freehold title to commence with the enfranchisement deed, and the title to make the enfranchisement cannot be called for: Conv. Act, 1881, s. 3 (2); see Dart, 380.

Reversions.

In the case of a reversionary interest, the instrument creating it should be abstracted, though more than 40

years old; this being a case in which the old 60 years' limit did not apply: see V. & P. Act, 1874, s. 1; 1 Pres. 19, 247; Dart, 335.

Leaseholds.

In the case of leaseholds, the abstract should, for a similar reason, commence with the lease, although more than 40 years old: see V. & P. Act, 1874, s. 1; 1 Pres. 12; *Frend* v. *Buckley*, L. R. 5 Q. B. 213; but it seems that the intermediate title between the lease and the commencement of the last 40 years cannot be required; see Sug. 370.

The title to the freehold reversion cannot be called for; V. & P. Act, 1874, s. 2; and in the case of an underlease, the title to the leasehold reversion cannot be required: Conv. Act, 1881, s. 3 (1); see Dart, 191.

In the case of a lease under a power, any preliminary contract for the lease cannot be called for: see Conv. Act, 1882, s. 4; S. L. Act, 1882, s. 81.

Root of title.

The nature of the instrument with which the title commences has next to be considered.

Freeholds. Conveyance.

In the case of freeholds, a conveyance on sale is the most satisfactory root of title: 1 Pres. 16; see *Bolton* v. *S. Bd.*, 7 Ch. D. 770.

Settlement.

A settlement 40 years old seems to be a good root of title; 1 Pres. 17; but a condition that the title shall commence with an instrument less than 40 years old cannot be enforced if it omits to state that such instrument is a voluntary settlement: *Re Marsh & Granville*, 24 Ch. D. 11.

Will.

A specific devise in a will seems to be a good root of title: 1 Pres. 17; but a general devise is not sufficient without proof of the testator's seisin: Dart, 338.

Appointment.

An appointment 40 years old, which recites the power under which it is made, seems in general to be a sufficient root of title: 1 Pres. 7; and see Conv. Act, 1881, s. 3 (3); but see Dart, 339.

Chap. II.

Disentailing deed.

So, a disentailing deed 40 years old, which recites the creation of the entail, seems in general to be a sufficient root of title: 1 Pres. 7; but see Dart, 339.

Inclosure award.

An inclosure award is not of itself a sufficient root of title, as an allotment is generally subject to the same uses as the land in respect of which it is made: see Chap. III. sect. 1; hence, the title of the allottee to such land should be abstracted: see Sug. 373.

Copyholds.

In the case of copyholds, the title should in general commence with a surrender and admittance: see Dart, 339.

Leaseholds.

In the case of leaseholds, the lease forming the root of title should not be an underlease: see Chap. VI.

Insufficient root of title.

If the abstract commences at too recent a date, or with an insufficient root of title, the defect should be noticed in the opinion and a requisition made that the proper title be shown.

Where a condition limiting the title to be shown is void, the purchaser cannot require a full title, but the vendor cannot compel him to complete without showing such a title: *Re Marsh & Granville*, 24 Ch. D. 11.

CHAPTER III.

DEDUCTION OF TITLE.

Deduction of title.

AFTER considering the root of title, the next thing to be attended to is the deduction of title to the vendor.

The instrument with which the title commences and every subsequent instrument through which it is traced, should be abstracted in chief: Sug. 407; Dart, 341; see *Re Ebsworth & Tidy*, 42 Ch. D. 23. The vendor is bound to do this at his own expense, whether such instruments are in his possession or not, notwithstanding s. 3 (6) of the Conv. Act, 1881: *Re Johnson & Tustin*, 30 Ch. D. 42.

If any incumbrance or equitable interest is disclosed, its subsequent history should be deduced in the same way, to show if it has been discharged, or, if subsisting, in whom it is vested.

If any gap occurs in the title deduced by the abstracted instruments, the defect should be noticed in the opinion and a requisition made for the missing title to be shown; and where the facts are not clear, information should be called for: see 1 Pres. 208.

The questions usually arising on a title may conveniently be considered under the following heads:—

(1.) The form of the abstracted instruments.

(2.) The estate granted thereby.

(3.) The owner's power of disposition and the devolution of his estate at death: see Chap. IV.

Chap. III.
Sect. I.

SECT. I.

FORM OF ABSTRACTED INSTRUMENTS.

The instruments through which titles are traced usually consist of Deeds, Wills, and Copyhold and Statutory Assurances.

DEEDS.

Deed.

Every part of a deed has to be considered to judge of its effect on the title: see 3 Pres. 58.

Date.

The date should be observed, otherwise a defect in the chronological arrangement of the abstract might lead to mistake as to the nature or validity of the estate granted: see 1 Pres. 4.

Where two deeds are executed on the same day, they take effect in such order as will carry out the manifest intention: *Gartside* v. *Silkstone, &c. Co.*, 21 Ch. D. 762.

If the date is wanting, it should be called for.

Parties.

It must not be assumed that a deed is executed by the persons named as parties thereto, unless so stated in the memorandum at the end of the abstract of such deed. Before any conclusion can be arrived at as to the effect of the deed, that memorandum must be referred to; and if it appears therefrom that any granting or consenting party has not executed the deed, it must be read as if he had not been named a party: see 3 Pres. 20, 59; and see *post*, p. 17.

A party granting property, which has been limited to a person of the same name and description by a previous deed, must generally be assumed to be the same person; but where there is a long interval between the two deeds, it is prudent to require some evidence of his identity: see Cov. 321; Dart, 378; and see *Re Cooper*, 20 Ch. D. 611.

Where a party is once properly described, a mistake in his name in a subsequent part of the deed is immaterial, if there is no doubt as to the person intended: 1 Pres. 62.

If any party appears to be an infant, lunatic, married woman, or bankrupt, the effect of such incapacity on the transaction must be considered: see 3 Pres. 7; and see *post*, Chap. IV. sect. 2.

Recitals require attention, as they may give notice of charges and other instruments affecting the title, or furnish information as to facts on which the title depends, such as the death of life-tenants and annuitants, and the happening of contingencies: see 3 Pres. 8. Recitals.

If it does not appear whether a recited instrument affects the property or not, the question should be asked; but if answered in the negative, it cannot be pressed: see *Patman* v. *Harland*, 17 Ch. D. 357.

If a recited instrument appears to relate to the property, a requisition should be made for it to be abstracted in chief and produced, as the purchaser is not entitled to rely on any statement as to its contents: see *Patman* v. *Harland*, 17 Ch. D. 357.

If, however, the recited instrument is prior to the root of title, no such requisition can be made; Conv. Act, 1881, s. 3 (3). But in the case of a recited will, the recital should generally be verified by inspection of the register at Somerset House: see 1 Pres. 263.

A mistake in the recitals will not invalidate an independent grant of parcels by a full description; 1 Pres. 62.

The recital of the agreement between the parties should be attended to, as a variation in the operative part by mistake would not be binding in equity: 3 Pres. 12; and general words in the operative part would be controlled by the recital: see *Ex parte Dawes*, 17 Q. B. D. 275.

If any breach of trust is disclosed, its effect on the title must be considered.

Chap. III. Sect. I.

Recitals of facts on which the title depends, must generally be verified by evidence: 3 Pres. 8, 229.

Exceptions:—

(1.) A recital of the title prior to the time fixed for the commencement of the abstract: see Conv. Act, 1881, s. 3 (3).

(2.) A recital 20 years old at the date of the contract: V. & P. Act, 1874, s. 2; see *Bolton* v. *L. S. Bd.*, 7 Ch. D 766; *Re Marsh & Granville*, 24 Ch. D. 11.

(3.) A recital evidently framed for the purpose of keeping notice of a trust off the deed, *e.g.*, the recital in a transfer of mortgage that the transferees are entitled in equity: *Re Harman & Uxbridge, &c. R. Co.*, 24 Ch. D. 720.

(4.) A recital of payment of the consideration: 3 Pres. 16.

Consideration.

It should be seen that the consideration is expressed to be paid to the persons entitled to receive it, and on sales by the Court, in the manner directed by the order for sale: see 3 Pres. 16, 18.

The amount of the consideration should be noticed, to see:—

(1.) That the deed is not voluntary: see p. 33;

(2.) That it is sufficiently stamped: see p. 20.

The clause acknowledging the receipt of the consideration should be seen to be in due form, where the indorsed receipt is omitted in reliance on the 55th sect. of the Conv. Act, 1881; see p. 19.

Appointment.

Where an appointment under a power is made, either of the estate or of new trustees, the power should be analysed and its terms and formalities noted, to see that it has been duly exercised: 2 Pres. 262; see *post*, Chap. IV., sect. 1.

Grantor.

It must be seen that the words of grant proceed from the person capable of granting: see 3 Pres. 24.

If the grantor's name is omitted, it must be considered whether the omission is material. If the intention is clear from the rest of the deed, the name may be supplied by construction; otherwise not: 1 Pres. 76.

It must be seen that trustees grant with the consent of those persons whose consent is required by the instrument creating the trust: 3 Pres. 26; see *post*, Chap. IV., sect. 4.

Words of grant.

Formal words of grant are unnecessary, so long as words showing an intention to transfer the estate are used: 3 Pres. 21; Wms. R. P. 199; see Conv. Act, 1881, s. 49.

Grantee.

The grantee need not be a party to the deed: see 8 & 9 Vict. c. 106, s. 5.

The omission of the grantee's name from the operative part may be supplied by the *habendum*: 3 Pres. 27; but if there is a grant to one, *habendum* to another, the deed may be void for uncertainty, unless the intention is clear from the context: 3 Pres. 28.

If the grantee appears to stand in any fiduciary position which would invalidate the conveyance, the effect on the title must be considered: see Lewin, 484.

A grant of freeholds by a person directly to himself and another, in a deed executed before 1882, passes the whole estate to the other: see Wms. R. P. 187; but in the case of a similar grant in a deed executed after 1881, the grantees take jointly: see Conv. Act. 1881, s. 50.

An assignment of leaseholds by a person directly to himself and another in a deed executed before the 13th of August, 1859, passes the whole estate to the other: see Wms. R. P. 187; but in the case of a similar assignment in a deed executed since that day, the assignees take jointly: see 22 & 23 Vict. c. 35, s. 21.

A grant of freeholds by a husband to his wife or by a wife to her husband, in a deed executed before 1882, is void unless a trustee or grantee to uses is interposed:

Chap. III. Sect. I.

see 1 Pres. 332; but in deeds executed after 1881 such a grant is valid; Conv. Act, 1881, s. 50; and see M. W. P. Act, 1882, s. 1.

An assignment of leaseholds by a husband to his wife, without the interposition of a trustee, in a deed executed before 1883, is void unless the husband constitutes himself a trustee: see *Baddeley* v. *Baddeley*, 9 Ch. D. 113; *Fox* v. *Hawks*, 13 Ch. D. 822; but in deeds executed after 1882, such an assignment seems to be valid; see M. W. P. Act, 1882, s. 1.

Parcels.

It must be seen that the parcels of every deed through which the title is traced comprise the property purchased: see 3 Pres. 31, 205; Sug. 413.

No specific description of the property is necessary, if there are general words wide enough to include it; 3 Pres. 213: see *Shardlow* v. *Cotterell*, 20 Ch. D. 95.

Where there is a sufficient specific description, an error in a further detail is immaterial; thus, if the land is described by name, a mistake in the name of the parish or tenant may be disregarded: 3 Pres. 207; see *Re Boulter*, 4 Ch. D. 241.

But where the parcels are merely described as land in the occupation of some one, evidence of such occupation should be called for; so, if merely described as the land purchased from or devised by a particular person, production of the conveyance or will should be required: 1 Pres. 263.

Where the parcels refer to a plan, it forms part of the title; *Brown* v. *Wales*, L. R. 15 Eq. 147; and a tracing should be called for to establish the identity: see Dart, 345.

Where the property is divided into shares, it must be noticed which of these shares pass by the various deeds: see 3 Pres. 35.

Mines.

Mines and minerals pass by a grant of the fee without being expressly mentioned: see Wms. R. P. 14.

Exceptions :—

(1.) In enfranchisement deeds, under the Copyhold Act, 1852, see 15 & 16 Vict. c. 51, s. 48.

(2.) In conveyances to a railway or waterworks company under the Consolidation Acts: see 8 & 9 Vict. c. 20, s. 77; 10 & 11 Vict. c. 17, s. 18; and see Dart, 604.

Exceptions. Exceptions from the parcels must be noticed, and ascertained not to affect the property purchased: see 3 Pres. 36.

Appurtenances. The appurtenance clause may be important where a right of way is held with the property: see *Brown* v. *Alabaster*, 37 Ch. D. 490. A clause of this kind is implied in conveyances made after 1881: see Conv. Act, 1881, s. 6.

All estate. The all estate clause is seldom material, as it does not extend the operation of the deed beyond its manifest intention: 3 Pres. 38; *Francis* v. *Minton*, L. R. 2 C. P. 543. A clause of this kind is implied in conveyances made after 1881: see Conv. Act, 1881, s. 63.

Habendum. The *habendum* requires attention to see that the grantee's name and the words of limitation are in due form; see 3 Pres. 39; and the validity of the limitations must be considered: see 1 Pres. 314.

The *habendum* is not an essential part of a deed, and if inconsistent with the grant may be rejected for repugnancy: 3 Pres. 43.

If the *habendum* is void for limiting a freehold estate *in futuro*, the defect may be cured by the operative part containing a valid grant *in præsenti*: *Boddington* v. *Robinson*, L. R. 10 Ex. 270.

If there is no *habendum*, it must be seen that the operative part contains proper words of limitation.

Words of limitation. In deeds excuted before 1882, the legal estate of inheritance does not pass without the word "heirs," and a legal estate tail is not created without the words "heirs of the body:" see 3 Pres. 44; Wms. R. P. 144.

Chap. III. Sect. I.

But in deeds executed after 1881, an estate in fee simple may be conveyed by the words "in fee simple," without the word "heirs," and an estate tail may be limited by the words "in tail," without the words "heirs of the body:" Conv. Act, 1881, s. 51.

No words of limitation are required in vesting declarations (see p. 28), or in statutory transfers of mortgages (see p. 28).

Where the use is declared in favour of the grantee, it is sufficient if the words of limitation are attached to the use; but where the use is declared in favour of a third person, his estate will be no larger than the estate supplying the seisin: 3 Pres. 123.

A term of years may pass by assignment without any words of limitation: 2 Pres. 20.

Where the term limited in the *habendum* of a lease differs from that mentioned in the *reddendum*, the former prevails, unless it is shown to be a mistake by the context or by the counterpart: *Burchell* v. *Clark*, 2 C. P. D. 88.

If there are several grantees, it must be noticed whether they are expressly made tenants in common, or in a conveyance to uses, whether there are any words of division; as, if not, they take as joint-tenants: 3 Pres. 49; see Dart, 1047.

Uses.

It must be considered whether the uses are executed by the statute, or whether they pass only equitable estates; see 3 Pres. 190.

A use upon a use gives a mere equitable interest: 1 Pres. 141; *Cooper* v. *Kynock*, L. R. 7 Ch. 398. So, an appointee under a power to appoint to uses takes the use, and any use declared of his seisin confers merely an equitable interest: 3 Pres. 124.

Where a person, having both a power and the estate, appoints to one person to the use of another, and also conveys the estate in the same form, the question whether the beneficiary takes the legal estate depends

on the intention shown by the context: see Sug. Pow. 357.

Uses of leaseholds and copyholds are merely equitable interests: 1 Pres. 140, 141.

If there are no uses declared of a freehold estate, it must be considered whether a use is raised by payment of a consideration, or by the context showing an intention that the estate is to remain in the grantee: see 2 Pres. 236—241.

Reddendum.

In the case of leaseholds, the *reddendum* in the lease under which the property is held must be noticed, to see that it agrees with the contract, and evidence of payment of the rent should be required.

Covenants in the lease must also be noticed to see that they are not unusual, and evidence of their performance should be required: see Chap. V.

Covenants.

It must be observed whether there are any covenants restricting the user of the property: see Chap. VI.

Covenants for production of title-deeds require attention, as they may disclose instruments affecting the title not elsewhere noticed in the abstract: see 1 Pres. 153.

Covenants for title should be examined to see whether any incumbrances are mentioned: see 3 Pres. 57.

The absence of covenants for title in any of the deeds is not considered an objection to title: 3 Pres. 58; Sug. 575.

The memorandum at the end of each abstracted deed must be referred to for information as to execution, attestation, and indorsed receipt, and acknowledgment, registration, and enrolment, where necessary; and any defect must be considered: see 3 Pres. 59.

Execution.

Where a deed is stated to be duly executed, it may generally be assumed that it is executed by all necessary parties: see Cov. 19; and see *ante*, p. 10.

Chap. III. Sect. I.

Execution by the grantee is unnecessary: see *Standing* v. *Bowring*, 31 Ch. D. 282; but the fact of his not executing lets in evidence of disclaimer: see 2 Pres. 226; *Peacock* v. *Eastland*, L. R. 10 Eq. 17.

Sealing is essential to the execution of a deed, but it need not be with wax; anything which admits of an impression is sufficient: 3 Pres. 61; see *Nat. Prov. Bk. of England* v. *Jackson*, 33 Ch. D. 1.

In the case of a deed executed by a company or corporation, a copy of the articles of association or incorporating Act should be required, to see that the formalities prescribed for the use of the common seal have been observed.

By attorney.

Where a deed appears to have been executed by attorney, an abstract of the power of attorney should be called for, to see that the execution of the deed was authorised by the power: see *Danby* v. *Coutts*, 29 Ch. D. 500.

Evidence of non-revocation of the power should also be required: see Chap. V.

Exceptions:—

(1.) In the case of a power of attorney executed after 1882, if given for value and expressed to be irrevocable, evidence of non-revocation is unnecessary: see Conv. Act, 1882, s. 8.

(2.) In the case of a power of attorney executed after 1882 (whether for value or not), if expressed to be irrevocable for a fixed time not exceeding one year, evidence of non-revocation during that time is unnecessary: see Conv. Act, 1882, s. 9.

Before 1882 an attorney could only execute a deed in the name of his principal: Sug. Pow. 199; see *Lawrie* v. *Lees*, 14 Ch. D. 256; but a deed executed after 1881 by an attorney in his own name is as effectual as if executed in the name of the principal: Conv. Act, 1881, s. 46.

Before the 1st of January, 1882, a married woman could not appoint an attorney: *Kenrick* v. *Wood*, L. R. 9

Eq. 333; but since that date she has been able to do so: see Conv. Act, 1881, s. 40; Dart, 642.

If the person executing by attorney appears to have been a trustee, it must be seen that the trust was not delegated: see 3 Pres. 67.

Escrow.

When a deed appears to have been delivered as an escrow, it must be seen that the conditions have been performed and that the second delivery has taken place: see 1 Pres. 275; *Watkins* v. *Nash*, L. R. 20 Eq. 262.

Attestation.

Attestation is not essential to the validity of a deed, unless prescribed by a power: 3 Pres. 71; in which case, if the deed was executed before the 13th of Aug., 1859, the terms of the power should be ascertained to have been complied with: Sug. 415; but if executed since that day, attestation by two witnesses is sufficient: 22 & 23 Vict. c. 35, s. 12; and see *post*, Chap. IV., sect. 1.

Indorsed receipt.

Deeds executed before 1882 require an indorsed receipt for the consideration, unless there is a recital of its payment; the want of an indorsed receipt being constructive notice that the price has not been paid: 3 Pres. 15.

A statement that a receipt for the consideration is indorsed may generally be regarded as sufficient: see *Bickerton* v. *Walker*, 31 Ch. D. 151; although the amount and the name of the payee are not mentioned in the abstract: see Cov. 19; but if there is no such statement, and no recital of payment, evidence of payment of the consideration should be called for, except in the case of deeds 20 years old, when the receipt in the body of the deed seems sufficient evidence under the V. & P. Act, 1874, s. 2: see also 3 Pres. 15.

In the case of deeds executed after 1881, a receipt either in the body of the deed or indorsed thereon is sufficient: Conv. Act, 1881, s. 55.

Acknowledgment.

In the case of a married woman's conveyance executed

Chap. III. Sect. I.

before 1883, it should not merely be seen that the memorandum at the end of the deed contains a statement that it has been duly acknowledged, but the usual evidence of acknowledgment should be required: see Chap. V.

Registration.

When the property is situate in a register county, it should be seen that there is a proper reference to the register in the memorandum at the end of each deed: see 3 Pres. 59. If such a reference is wanting, a requisition should be made that the deed be registered at the vendor's expense: see Sug. 546.

Enrolment.

In the case of a disentailing deed, it should be seen that there is a memorandum of its enrolment in Chancery, within 6 months after execution: see Sug. 468; and see *post*, Chap. IV., sect. 1.

Stamps.

It should be seen that all modern deeds on which the title depends are duly stamped: see Sug. 411; Cov. 29. Under an open contract, the purchaser is entitled to have this done at the vendor's expense: *Whiting* to *Loomes*, 14 Ch. D. 822; 17 Ch. D. 10; and in the case of deeds executed since the 16th of May, 1888, notwithstanding any stipulation to the contrary: see 51 Vict. c. 8, sect. 20. For Tables of Stamp Duties, see Appendix.

Alterations.

Alterations by erasure or interlineation in a deed after execution, do not divest any estate which has passed; but if in a material part, avoid the deed, so that the covenants in it cannot be enforced: Wms. R. P. 149; see *Re Batten*, 22 Q. B. D. 685.

The presumption that alterations have been made prior to execution may be rebutted (see Cov. 11); accordingly, where an alteration affecting the title is not initialled by the attesting witnesses or noticed in the attestation clause, evidence that it was made before execution is desirable.

WILLS.

Will.

In perusing a will the following points have to be attended to :—

(1.) Whether there is any devise of the property;

(2.) What estate passes; and

(3.) Whether subject to any trusts or charges: see 3 Pres. 148.

The whole of a will requires perusal to see whether there is any specific devise of the property, and if so, whether it is modified or rendered contingent by any subsequent condition or gift over. If there is no specific devise, a general devise must be looked for: see 3 Pres. 158.

The following rules of construction apply to wills made after 1837, unless a contrary intention appears.

General devise.

A general devise of the testator's land passes all freeholds, copyholds, and leaseholds belonging to him at his death: see 1 Vict. c. 26, ss. 24, 26.

A general devise includes property over which the testator has a general power of appointment (s. 27): see *Re Marsh*, 38 Ch. D. 630; *Re Phillips*, 41 Ch. D. 417.

Words of limitation.

A devise of real estate without words of limitation passes the fee simple or other the whole estate of the testator (s. 28), and a bequest of leaseholds passes the whole term: 3 Pres. 150.

A devise of real estate to a person and his children, when he has no child at the date of the will, gives him an estate tail: see Hawkins, 198; *Clifford* v. *Koe*, 5 App. Cas. 447.

Where the property is given to two or more persons, it must be noticed whether there are any words of division, as, if not, they take as joint-tenants: see 3 Pres. 49.

Where the property is given to a married woman, it should be ascertained whether the will contains any

Chap. III. Sect. I.

clause making her interest separate estate or subject to a restraint on anticipation.

Lapse.

It must be ascertained whether the devisee has survived the testator, as, if not, the devise lapses: see 3 Pres. 238.

Exceptions:—

(1.) Devises of estates tail do not lapse if inheritable issue survive the testator: 1 Vict. c. 26, s. 32.

(2.) Gifts to children or other issue of the testator who leave issue living at his death do not lapse (s. 33): see *Re Hensler*, 19 Ch. D. 612.

(3.) In the case of a gift to a class, the members surviving the testator take the whole: *Re Coleman & Jarrom*, 4 Ch. D. 165.

Property comprised in lapsed and void devises passes under the residuary devise (s. 25).

Charge of debts, &c.

It must be observed whether any debts, legacies or annuities are charged on the estate.

A general direction that the testator's debts are to be paid makes them a charge on his real estate; but a direction that they are to be paid by the executors, only charges real estate devised to them: Hawkins, 282; *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465.

A gift of legacies, preceding a residuary gift of real and personal estate combined, charges the legacies on the real estate: Hawkins, 294; *Re Brooke*, 3 Ch. D. 630.

Trusts.

It must be noticed whether the will contains any clause making the devisee of the property a trustee, and whether the beneficial interest is disposed of by the will: see *Longley* v. *Longley*, L. R. 13 Eq. 133.

Devise to trustees.

In the case of a devise to trustees, it must be considered whether they take the legal estate in fee simple; the general rule being that they take only so much of the legal estate as the purposes of the trust require, unless

an intention to give them the fee is shown, as by a trust to pay debts or a general power of sale or leasing: Hawkins, 143—158; *Marshall* v. *Gingell*, 21 Ch. D. 790.

A similar rule prevails as to copyholds and leaseholds: see *Baker* v. *White*, L. R. 20 Eq. 177.

Trustees and mortgagees.

In the case of the will of a trustee or mortgagee dying before 1882, it must be considered whether the trust or mortgage estate passes.

If there is no specific devise of trust or mortgage estates they pass by a general devise, unless an intention is shown to confine the devise to beneficial interests, *e.g.*, by a charge of debts or legacies, or by limitations in strict settlement: 3 Pres. 240; *Re Bellis*, 5 Ch. D. 504; *Re Packman & Moss*, 1 Ch. D. 214.

Exception: The estate of a bare trustee, dying between the 7th of August, 1874, and the end of 1875, seems not to pass by a devise: see V. & P. Act, 1874, s. 5; and see *post*, Chap. IV., sect. 4.

In the case of trustees and mortgagees dying after 1881, a devise of their trust or mortgage estates of inheritance seems to have no effect: see Conv. Act, 1881, s. 30; except as to copyholds within the Copyhold Act, 1887, s. 45: see *post*, Chap. IV., sect. 4.

Execution.

The memorandum at the end of the will should be noticed to see whether it is signed by the testator and attested by two witnesses: see 1 Vict. c. 26, s. 9.

Wills exercising powers of appointment should be seen to be executed in the same manner: see s. 10.

Attesting witnesses.

Where there is a beneficial devise of the property the names of the attesting witnesses should be called for, to see that the devise is not rendered void by reason of the devisee being an attesting witness or the husband or wife of one: see s. 15.

Registration.

Where the property is situate in Middlesex or York-

Chap. III. Sect I.

shire it should be noticed whether the memorandum at the end of the will states it to have been registered within six months from the testator's death; if not, the fact should be ascertained and any defect in this respect considered: see Wms. R. P. 219.

Non-registration of a will of freeholds is not necessarily a defect in title, as since the 7th of August, 1874, a conveyance for value by the devisee or some one deriving title under him, if registered before, prevails over any assurance from the heir: V. & P. Act, 1874, s. 8; and see York. Reg. Act, 1884, ss. 11—14.

Non-registration of a will of leaseholds seems not to be a defect of title: Sug. 546; see Dart, 772.

Probate.

Probate is unnecessary in the case of freeholds and copyholds, but in the case of leaseholds it is required to complete the evidence of title: Sug. 414, 415.

Renunciation of probate may affect the devolution of real estate where the executors are also trustees, as it affords evidence of disclaimer: *Re Gordon*, 6 Ch. D. 534.

Alterations.

Alterations by erasure or interlineation in a will are presumed to be made after its execution: see *Re Sykes*, L. R. 3 P. & D. 26; and such alterations have no effect unless executed as a will: 1 Vict. c. 26, s. 21.

Revocation.

In the subsequent part of the abstract attention must be directed to see whether the will has been revoked by the testator's marriage, or by a subsequent will or codicil: see 3 Pres. 181; 1 Vict. c. 26, ss. 18, 20.

A subsequent conveyance does not operate as a revocation where the testator has power of disposition over the property at his death (s. 23).

COPYHOLD ASSURANCES.

The principal points to be attended to in perusing surrenders and admittances are as follows:—

Surrender.

It should be seen that the person who surrenders has been admitted, as, if not, the surrender will be void: Scriv. 90.

By married woman.

If the surrenderor is a married woman, it should be seen that her husband's assent and her separate examination are recorded, as in the absence of such assent and examination her surrender is void: Scriv. 84, 85; except in cases falling within the Married Women's Property Act, 1882: see *post*, Chap. IV., sect. 2.

By attorney.

If the surrender is by attorney an abstract of the power of attorney should be called for, to see that the surrender is authorised: see Scriv. 83; and evidence of non-revocation should be required, unless the case falls within the 8th or 9th section of the Conveyancing Act, 1882: see p. 18.

Parcels.

It should be seen that the property purchased is comprised in each surrender and admittance through which the title is traced; but as the old descriptions are adhered to in the court rolls, less certainty is required than in the case of freeholds or leaseholds, provided evidence is forthcoming of the property having been enjoyed for a long period under such description: Cov. 37, 168; Sug. 326.

Uses.

The uses in the surrender should be attended to, as they govern the operation of the admittance: Scriv. 94. For the same reason the surrender should be ascertained to contain proper words of limitation: see Scriv. 96.

Admittance.

It should be seen that the surrender is completed by admittance, as until then the surrenderee has no legal title: Scriv. 113; see *post*, p. 31.

It should be seen that the person admitted is the surrenderee, as if any other person is admitted he does not acquire any estate: Scriv. 95; but it is immaterial whether the surrenderee is admitted in person or by attorney: Scriv. 120; 50 & 51 Vict. c. 73, s. 2.

The estate limited by the admittance must be com-

pared with the uses of the surrender, as any variation in the admittance would be void: see Scriv. 95.

In the case of a surrender to such uses as a third person shall appoint, only the appointee has to be admitted: Scriv. 125.

So, executors, merely directed by will to sell, can convey by bargain and sale, and only the purchaser has to be admitted: Scriv. 163.

It should be seen that the copies of court roll of all surrenders and admittances purport to be signed by the steward: Cov. 156; see Wms. R. P. 368.

Stamps.

The want of stamps in the case of surrenders and admittances before 1871 seems to be of little importance, as in such cases the court rolls are admissible in evidence: see Burton, 411.

But as this privilege is taken away by the Stamp Act, 1870, s. 81, it should be ascertained that surrenders out of court and the copies of court roll of surrenders in court since the 1st of January, 1871, are stamped, in the case of a sale or mortgage, with the usual *ad valorem* duty (see Appendix), and in other cases with a 10*s*. stamp; see 33 & 34 Vict. c. 97, s. 77.

STATUTORY ASSURANCES.

In the case of assurances taking effect under Acts of Parliament, the statutory provisions relating thereto should be ascertained to have been complied with.

The assurances of this kind usually met with are:—

(1.) Vesting Orders under the Trustee Acts;

(2.) Vesting Declarations under the Conv. Act, 1881;

(3.) Statutory Transfers of mortgages under the Conv. Act, 1881;

(4.) Awards under Inclosure Acts.

VESTING ORDERS.

Vesting orders.

Freeholds and leaseholds.

A vesting order of freeholds or leaseholds under the Trustee Act, 1850, or the Trustee Extension Act, 1852, has in general the same effect as if the trustee or mortgagee in whom the land was vested at the date of the order had been free from disability and had duly executed a conveyance or assignment for the estate mentioned in the order: see 13 & 14 Vict. c. 60, ss. 3—34; 15 & 16 Vict. c. 55, ss. 2, 8; Seton, 515, 545.

Copyholds.

A vesting order of copyholds does not dispense with surrender or admittance, unless made with the consent of the Lord of the Manor: see 13 & 14 Vict. c. 60, s. 28; Seton, 523.

Evidence.

No evidence need be required of the facts on which the order is founded: see 13 & 14 Vict. c. 60, s. 44.

Stamps.

It should be seen that the order is duly stamped as a conveyance: see 15 & 16 Vict. c. 55, s. 13; 33 & 34 Vict. c. 97, s. 70. Since the 1st of January, 1871, an order appointing new trustees as well as vesting the estate seems to have required two 10*s.* stamps: see 33 & 34 Vict. c. 97, s. 8; *Hadgett* v. *Comrs. of In. Rev.*, 3 Ex. D. 46.

Vesting orders in suits.

Where an order is made for specific performance, partition, or exchange, or generally for conveyance, and any party to the suit is declared to be a trustee, his estate can be passed by a vesting order: 13 & 14 Vict. c. 60, s. 30. So, where an order for sale has been made, the estate of any party to the suit can be passed by a vesting order: 15 & 16 Vict. c. 55, s. 1.

Conveyance by order.

Where an order has been made appointing a person to convey land, his conveyance, in conformity with the terms of the order, has the same effect as a vesting order: see 13 & 14 Vict. c. 60, s. 20; 47 & 48 Vict. c. 61, s. 14.

VESTING DECLARATIONS.

Vesting declarations.

A vesting declaration under the 34th section of the Conv. Act, 1881, has the effect of passing the trust property in the following cases:—

(1.) If contained in a deed by which a new trustee is appointed, it must be made by the appointor, and must purport to vest the trust property in the persons who, by virtue of the deed, become and are the trustees (sub-s. 1).

(2.) If contained in a deed by which a retiring trustee is discharged under the Act, it must be made by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, and must purport to vest the property in the continuing trustees alone (sub-s. 2).

It should be ascertained that the deed is executed by all the persons making the declaration.

It should be seen that the deed is duly stamped.

If new trustees are appointed by the same deed, two 10*s*. stamps seem to be required: see 33 & 34 Vict. c. 97, s. 8; *Hadgett* v. *Comrs. of In. Rev.*, 3 Ex. D. 46.

Mortgages and the legal estate in copyholds cannot be passed by a vesting declaration (sub-s. 3).

STATUTORY TRANSFERS.

Statutory transfers.

The transfer of the benefit of a statutory mortgage, under sect. 27 of the Conv. Act, 1881, passes both the debt and the estate without words of limitation, provided the following conditions are complied with:—

(1.) The transfer must be by deed;

(2.) It must be expressed to be made by way of statutory transfer of mortgage;

(3.) It must be in one of the forms given in Part II. of

the 3rd Schedule to the Act, subject to any necessary variations and additions.

Only a statutory mortgage can be transferred in this way (sub-s. 1).

INCLOSURE AWARDS.

Inclosure award.

It should be ascertained under what Act the award is made, and a Queen's Printer's copy should be obtained: see Sug. 407.

The allotment should be seen to be authorised by the Act, and any statutory provisions as to the tenure or title of the land noted: see Sug. 375.

It should be observed in respect of what land the award is made, as the Inclosure Acts make the allotment subject to the same title and tenure: see Sug. 373; 8 & 9 Vict. c. 118, ss. 93, 94; and see *Williams* v. *Phillips*, 8 Q. B. D. 437.

If the award is made under the Acts for the inclosure, exchange and improvement of land (8 & 9 Vict. c. 118; 15 & 16 Vict. c. 79, &c.), confirmation by the Inclosure Commissioners under their hands and seal seems to be sufficient evidence of its validity: see 8 & 9 Vict. c. 118, s. 105.

SECT. II.

ESTATE GRANTED.

In considering the effect of any instrument, it must be ascertained:—

(1.) Whether the estate passed is legal or equitable;
(2.) Whether it merges in any other estate;
(3.) Whether it is absolute or defeasible;
(4.) Whether it is avoided by any rule of law.

LEGAL AND EQUITABLE ESTATES.

Legal and equitable estates.

There can be only one legal estate of inheritance in freeholds or copyholds; so, there can be only one legal estate in a term of years; but there may be any number of equitable estates.

Thus, if a legal owner in fee makes several mortgages in fee in succession, only the first mortgagee obtains the legal estate, and all the other mortgagees acquire merely equitable interests: see Wms. R. P. 431.

Severance of the legal and equitable estates usually occurs by means of a mortgage or settlement, but may also happen where a conveyance which passes the legal estate is invalid in equity, or where an instrument which confers an equitable title does not pass the legal estate: see 3 Pres. 257.

The Judicature Acts have not abolished the distinction between legal and equitable estates: *Joseph* v. *Lyons*, 15 Q. B. D. 280.

The legal estate in freeholds and leaseholds can only be conveyed *inter vivos* by deed: see 8 & 9 Vict. c. 106, ss. 2, 3; *Nat. Prov. Bk. of England* v. *Jackson*, 33 Ch. D. 1.

A written contract or conveyance not under seal passes an equitable interest to a purchaser: Wms. R. P. 167; *Holroyd* v. *Marshall*, 10 H. L. C. 191; but a legal owner can only make a gift or voluntary settlement by a conveyance under seal or written declaration of trust: *Richards* v. *Delbridge*, L. R. 18 Eq. 11.

In the case of contracts or executory trusts, words of limitation are unnecessary: 3 Pres. 44.

The deposit of title-deeds to secure a loan creates an equitable charge, subject to the terms of any memorandum of deposit: see *Shaw* v. *Foster*, L. R. 5 H. L. 321.

But the mere delivery of title-deeds by way of gift does

not pass any interest: *Re Richardson*, 30 Ch. D. 396; *Re Hancock*, 36 W. R. 710.

The legal estate in copyholds only passes by admittance: Scriv. 113; see *Hall* v. *Bromley*, 35 Ch. D. 642.

A covenant to surrender passes an equitable interest to a purchaser, but cannot be enforced by a volunteer, unless accompanied by a written declaration of trust: *Steele* v. *Waller*, 28 Beav. 466.

The legal estate can only be transferred by the person in whom it is vested, except in the following cases:—

(1.) Under a common law authority given by will: see 2 Pres. 247; and see *post*, p. 68.

(2.) Under a power to appoint a use: see 2 Pres. 246; and see *post*, p. 47.

(3.) Under a statutory power: see 2 Pres. 247: and see *post*, pp. 45, 65, 66, 69.

All estates created (except under a power) by a person having only an equitable interest are equitable: 2 Pres. 257; and if he subsequently acquires the legal estate, it will not pass by estoppel, unless the conveyance contained a precise averment that the grantor had the legal estate: *Gen. Finance, &c. Co.* v. *Liberator, &c. Soc.*, 10 Ch. D. 15.

A decree of the Court of Chancery or judgment of the Supreme Court in general operates only on the equitable ownership: see 3 Pres. 133; to pass the legal estate, there must be a conveyance or vesting order: see p. 27.

Exception:—A decree for rectification of a deed where property has been omitted, is sufficient to pass the legal estate; *White* v. *White*, L. R. 15 Eq. 247.

MERGER.

Merger.

When the legal estate and the whole equitable interest unite in the same person, the equitable interest merges in the legal estate: 2 Pres. 235; *Re Douglas*, 28 Ch. D.

327; but a legal estate cannot merge in an equitable interest: 2 Pres. 12.

If a base fee unites with the reversion in fee, it does not merge but becomes enlarged: 3 & 4 Will. IV. c. 74, s. 39.

An estate tail never merges: 1 Pres. 407.

When a life estate and the immediate reversion vest in the same person, the life estate merges in the reversion: Burton, 244.

So, a term merges if it vests in the person who holds the immediate reversion, whether freehold or leasehold: 2 Pres. 13.

Exceptions:—

(1.) Where one of the interests is held *in autre droit*, there is no merger in equity: *Chambers* v. *Kingham*, 10 Ch. D. 743; nor, since the 1st of November, 1875, at law: Jud. Act, 1873, s. 25 (4); 37 & 38 Vict. c. 83, s. 2.

(2.) A reversionary term (*i.e.*, one to commence *in futuro*) neither causes nor prevents merger: *Hyde* v. *Warden*, 3 Ex. D. 84.

(3.) A term does not merge where an intermediate term is vested in a third person: Burton, 294.

Rule in *Shelley's case.*

Whenever in the same instrument there is a gift to a person for life and also a gift to his heirs or the heirs of his body, the different estates coalesce (provided they are both legal or both equitable), and vest the fee simple or fee tail in the donee, subject to any intermediate estates: 2 Pres. 432; see *Richardson* v. *Harrison*, 16 Q. B. D. 85.

This rule (called the rule in Shelley's case) applies to gifts by will as well as by deed: *Re White and Hindle*, 7 Ch. D. 201; and as to its application to leaseholds, see *Comfort* v. *Brown*, 10 Ch. D. 146.

The rule does not apply when the particular estate is for years only: *Coape* v. *Arnold*, 4 D. M. & G. 574.

DEFEASIBLE ESTATES.

Defeasible estates.

As a rule, if a person once conveys away his whole estate, the conveyance will not be defeated by his subsequent grant or bankruptcy.

Exceptions :—

Power of revocation.

(1.) A grant in which a power of revocation is reserved may be defeated by a subsequent grant; see Sug. 721.

Voluntary conveyance.

(2.) A voluntary conveyance of real estate may be defeated by a subsequent conveyance to a purchaser: 27 Eliz. c. 4; provided the want of consideration has not been supplied in the meantime: see *Clarke* v. *Willott*, L. R. 7 Ex. 313; but an assignment of leaseholds to which liability is attached is not within the Act: *Price* v. *Jenkins*, 5 Ch. D. 619; *Harris* v. *Tubb*, 42 Ch. D. 79.

Unregistered conveyance.

(3.) An unregistered conveyance of property in Middlesex or Yorkshire may be defeated by a subsequent conveyance duly registered: see Sug. 727; York. Reg. Act, 1884, s. 14.

Fraudulent settlement.

(4.) A settlement fraudulent against creditors is avoided by 13 Eliz. c. 5: see *Re Maddever*, 27 Ch. D. 523.

Voluntary settlement.

(5.) A voluntary settlement made by a trader, or after 1883 by any person, may in certain cases be defeated by the settlor becoming bankrupt within 10 years; see B. Act, 1869, s. 91; B. Act, 1883, s. 47; *Ex parte Hillman*, 10 Ch. D. 622; *Ex parte Todd*, 19 Q. B. D. 186.

Creditors' deed.

(6.) An assignment for the benefit of creditors made after 1887 (otherwise than in pursuance of the bankruptcy law) is void unless stamped and registered within seven days under the Deeds of Arrangement Act, 1887; 50 & 51 Vict. c. 57, s. 5.

FUTURE ESTATES.

Future estates.

In determining as to the validity of a future estate, it must be ascertained whether it is vested or contingent,

Chap. III. Sect. II.

and if contingent, whether a remainder or an executory interest.

Contingent.

No limitation is deemed contingent if it can be construed as vested; 2 Pres. 92.

Remainders and executory interests.

Future estates in a deed, if not created by way of use, can only take effect as remainders; and every limitation in a will, or by way of use in a deed, which can possibly take effect as a remainder is so treated, and cannot operate as an executory interest: 2 Pres. 117; *Brackenbury* v. *Gibbons*, 2 Ch. D. 417; but if it cannot possibly take effect as a remainder, it operates as an executory interest: *Re Lechmere and Lloyd*, 18 Ch. D. 524.

A limitation once operating as a remainder can never become an executory interest: 2 Pres. 172. But an executory interest may sometimes become a remainder by the vesting of a prior estate: see 2 Pres. 117.

A limitation can only take effect as a remainder when the following conditions are fulfilled:—

(1.) There must be a prior vested particular estate, which, in the case of a contingent remainder, must be of freehold;

(2.) There must be no interval between the determination of the particular estate and the commencement of the remainder;

(3.) The remainder must not defeat the prior estate;

(4.) It must not be subsequent to a limitation in fee simple: 2 Pres. 90, 91.

When any of these conditions is violated, the limitation will be void, unless contained in a will or created by way of use in a deed, in which case it will take effect as an executory interest, provided it does not contravene the rule against perpetuities: 1 Pres. 114.

Examples:—

(1.) Devise to trustees for 120 years if A. so long live, and subject thereto to B. for life and then to the children of A. and B. living at the death of the survivor in fee.

If A. survives B., the remainder fails: *Cunliffe* v. *Brancker*, 3 Ch. D. 393.

(2.) Devise to A. for life and then to such of his children as attain 21 before or after his death in fee, creates an executory interest which is valid as to all, including children under age at A.'s death: *Re Lechmere and Lloyd*, 18 Ch. D. 524; see *Miles* v. *Jarvis*, 24 Ch. D. 633.

(3.) Devise to A. (an infant) and his heirs, but in case he dies under age to B. and his heirs, gives B. a valid executory interest: Wms. R. P. 311.

(4.) So, a grant to A. and his heirs to the use of B. and his heirs until B.'s marriage, and then to other uses is valid: Wms. R. P. 288.

Contingent remainders of freeholds.

Since the 1st of January, 1845, contingent remainders have not been defeated by the forfeiture, surrender, or merger of the prior estate: see 8 & 9 Vict. c. 106, s. 8.

But a legal contingent remainder created before the 2nd of August, 1877, is liable to be defeated by the particular estate expiring before the remainder becomes vested: Wms. R. P. 280.

Example:—Gift to A. for life, with remainder to such of B.'s children as attain 21, fails as to any child under age at A.'s death: *Brackenbury* v. *Gibbons*, 2 Ch. D. 417.

An equitable contingent remainder is not liable to be so defeated, whether the legal estate is vested in trustees or outstanding in a mortgagee: 2 Pres. 148; *Abbiss* v. *Burney*, 17 Ch. D. 211; *Astley* v. *Micklethwait*, 15 Ch. D. 59.

Of copyholds.

Contingent remainders of copyholds are not destroyed by the surrender, forfeiture, or merger of the prior particular estate, but if created before the 2nd of August, 1877, may be defeated by its expiration before they become vested: 2 Pres. 149.

New law.

A contingent remainder of freeholds or copyholds created since the 2nd of August, 1877, does not fail by

Chap. III. Sect. II.

the determination of the prior particular estate if it would have been valid as an executory interest: 40 & 41 Vict. c. 33.

Remoteness.

Legal remainders are not within the rule against perpetuities, but are void if limited to the child of an unborn person to whom a prior life estate is limited; and all subsequent limitations over are also void: 2 Pres. 114; see *Whitby* v. *Mitchell*, W. N., 1889, 146.

Cy près.

Exception:—In the case of a will, a limitation to an unborn person for his life with remainder to his children in tail, gives the unborn person an estate tail: Wms. R. P. 273.

Rule against perpetuities.

Executory interests and equitable remainders which are not so limited as to vest or fail of effect within lives in being and 21 years and the period of gestation, are void for remoteness; 2 Pres. 152; except in the case of limitations in defeasance of or subsequent to an estate tail: 1 Pres. 131.

Example:—Devise upon trust for A. for life and after his death to convey the fee to such son of B. as first attains 25. The executory devise is void: *Abbiss* v. *Burney*, 17 Ch. D. 211.

The rule applies also to executory interests created by covenant: *S. W. R. Co.* v. *Gomm*, 20 Ch. D. 562.

If a limitation is void for remoteness, subsequent limitations are also void; 2 Pres. 170; but a limitation having a double aspect or contingency may be good in one event though void in the other: 2 Pres. 171; see *Monypenny* v. *Dering*, 2 D. M. & G. 145.

Limitations void in their creation cannot become good by subsequent events; 2 Pres. 172.

An executory interest limited after an estate tail is liable to be defeated by the entail being barred; 2 Pres. 121.

Limitations in default of issue.

Executory limitations over on default or failure of issue of a person entitled in fee, or for years, or for life, if contained in instruments coming into operation after 1882, become void if and as soon as any issue attain 21: Conv. Act, 1882, s. 10.

Executory limitations in defeasance of an estate in fee simple may be void for repugnancy; see p. 39.

CHAPTER IV.

POWER OF DISPOSITION AND DEVOLUTION OF ESTATE.

Chap. IV. Sect. I.

Power of disposition.

Two questions constantly arise on an abstract:—

(1.) Whether a grantor has power to dispose of the property in the way he purports to do;

(2.) How an estate devolves on the death of the owner without having exercised his power of disposition.

The general rule is that a person cannot grant a larger estate than he has: 8 Pres. 25; Wms. R. P. 199. Accordingly, a conveyance must not be assumed to pass an estate merely because it purports to do so; but the power of disposition of the grantor must be considered.

It is proposed to deal separately with the power of disposition possessed by tenants in fee simple, in tail, for life, and for years, and donees of powers of appointment, as well as the devolution of their estates at death; and then to consider the modifications caused by incapacity and co-ownership, and the powers of mortgagees, executors, administrators, trustees, building societies, joint stock companies and railway companies.

SECT. I.

TENANTS IN FEE.

Tenant in fee; power of disposition.

A beneficial owner in fee simple of freeholds can convey the fee or any less estate *inter vivos* or devise it by will: see 1 Pres. 377; Wms. R. P. 68; but if the owner was married on or before the 1st of January, 1834, any dis-

position made by him is subject to his wife's right to dower. See p. 42.

An owner in fee simple of copyholds has full power of disposition *inter vivos* or by will, but in the absence of a special custom may forfeit his estate by granting a lease for more than a year without the lord's licence: Wms. R. P. 348, 357.

Condition restraining alienation.

A condition in absolute restraint of alienation, attached to an estate in fee simple, is void for repugnancy; *Re Rosher*, 26 Ch. D. 801. So is a condition determining it on bankruptcy: *Re Machu*, 21 Ch. D. 838.

There is some doubt as to how far a partial restraint on alienation is valid: compare *Re Macleay*, L. R. 20 Eq. 186, and *Re Rosher*, 26 Ch. D. 801; and see 2 Pres. 194; Dart, 22.

Gift over.

An estate in fee simple may be determined by a gift over in the nature of an executory interest; see p. 34. But a gift over on alienation or bankruptcy is void for repugnancy: *Corbett* v. *Corbett*, 14 P. D. 7; *Re Dugdale*, 38 Ch. D. 176. So is a gift over on death intestate, or without having alienated: *Barton* v. *Barton*, 3 K. & J. 512; *Shaw* v. *Ford*, 7 Ch. D. 669; and see *Re Parry & Daggs*, 31 Ch. D. 130.

Descent.

On the death intestate of a beneficial owner in fee of freeholds, the estate descends (subject to the widow's right to dower), to his heir at law; unless the owner inherited the property, or the custom of gavelkind or Borough-English applies: see 3 & 4 Will. IV. c. 106, s. 2.

The following rules of descent apply in cases of death since the 1st of January, 1834:—

If the intestate inherited the property, the descent is traced from the 'purchaser,' *i.e.*, the last owner who did not inherit: 3 & 4 Will. IV. c. 106, ss. 1, 2; see Dart, 881.

If the intestate acquired the legal estate and equitable

interest as heir of different persons, the descent follows the legal estate: *Re Douglas*, 28 Ch. D. 327.

Where there is a total failure of heirs of the 'purchaser' the descent is traced from the person last entitled to the land, as if he had been the 'purchaser': 22 & 28 Vict. c. 35, s. 19.

No one can take as heir unless he survives the ancestor: see Wms. R. P. 96.

Rules of descent.

The principal rules of descent are as follows:—

(1.) The estate descends first to the issue;

(2.) Males take before females in equal degree;

(3.) Of males in equal degree, the eldest alone inherits; but females in equal degree inherit all together;

(4.) Issue of a deceased person represent their ancestor *in infinitum*: Wms. R. P. 100—104;

(5.) On failure of issue, the estate descends to the nearest lineal ancestor; brothers and sisters tracing their descent through their parent: 3 & 4 Will. IV. c. 106, ss. 5, 6.

(6.) The half blood inherit next after the whole blood and their issue, if the common ancestor is a male, and next after the common ancestor, if a female (s. 9).

Accordingly, the nearer heirs of the 'purchaser' take in the following order:—

(A.) Where the 'purchaser' has children:—

(1.) The eldest son, if he survives, is heir to the exclusion of the others.

(2.) If the eldest son is dead, without leaving issue who survive the 'purchaser,' the second son inherits.

(3.) So on with the other sons in order of seniority, including sons by a subsequent marriage.

(4.) If there is no son, or if all the sons are dead without leaving issue who survive the 'purchaser,' the daughters all inherit together, including daughters by a subsequent marriage.

(5.) If any son or daughter is dead, leaving issue who survive the 'purchaser,' they inherit in the place of their parent, taking as between themselves in the same order as the children of the 'purchaser.'

(B.) Where the 'purchaser' has no children, or all his children are dead without leaving issue who survive him:—

(1.) The father, if he survives, is heir.

(2.) If the father is dead, having had other children by the same marriage, they and their issue inherit in the following order:—

(i.) The 'purchaser's' eldest brother if he survives.

(ii.) If the eldest brother is dead without leaving issue who survive the 'purchaser,' the second brother inherits.

(iii.) So on, with the other brothers in order of seniority.

(iv.) If there is no brother, or if all the brothers are dead without leaving issue who survive the 'purchaser,' the sisters all inherit together.

(v.) If any brother or sister is dead leaving issue who survive the 'purchaser,' they inherit in the place of their parent, taking as between themselves in the same order as the children of the 'purchaser.'

(3.) If there is no brother or sister of the whole blood, or if all have died without leaving issue who survive the 'purchaser,' the father's issue by any other marriage inherit in the same order.

(4.) If the father is dead, and the 'purchaser' has no child, brother or sister, or if they are all dead without leaving issue who survive him, the paternal grandfather inherits, or if he is dead, the paternal uncles and their issue in the same order as brothers and their issue, and in default of them, the paternal aunts and their issue.

Chap. IV. Sect. I.

For the order in which more remote heirs inherit, see Wms. R. P. 113—115.

Gavelkind.

Land in Kent is presumed to be of gavelkind tenure, if not shown to be disgavelled; Cov. 172; see Dart, 869.

Where the custom of gavelkind prevails, primogeniture is excluded, and the estate descends to all the sons equally; the issue of a deceased son taking his share by representation. In default of sons, all the daughters inherit together: Cov. 172; Rob. Gav. 55. The same rule prevails among collaterals, so that brothers all inherit together; the issue of a deceased brother taking his share by representation: Rob. Gav. 57; *Hook* v. *Hook*, 1 H. & M. 43.

Borough-English.

Where the custom of Borough-English applies, the estate descends to the youngest son to the exclusion of all the other children; but the custom does not usually extend to collaterals: Tud. L. C. 741.

Copyholds.

Copyholds of inheritance descend according to the custom prevailing in the manor. In cases not provided for by the custom, the descent is according to the common law: *Re Smart*, 18 Ch. D. 165.

Dower.

Old law.

If an owner in fee or in tail of freeholds was married on or before the 1st of January, 1834, his wife is entitled to dower, except in the following cases:—

(1.) Where the owner has not at any time during the coverture been solely seised of the legal estate in possession;

(2.) Where the estate is one which his issue by her could not by possibility inherit;

(3.) Where the right has been barred by jointure, see 3 Pres. 367; Wms. R. P. 233.

New law.

In the case of a person married after the 1st of January, 1834, dower attaches to both his legal and equitable estates of inheritance in possession: 3 & 4 Will.

IV. c. 105, s. 2; notwithstanding uses to bar dower; *Clarke* v. *Franklin*, 4 K. & J. 266; but it may be excluded by:—

(1.) Disposition in his lifetime or by will (s. 4): see *Lacey* v. *Hill*, L. R. 19 Eq. 346;

(2.) Declaration barring dower contained in a deed or will (ss. 6, 7); or

(3.) Devise of real estate to his widow (s. 9): see Sug. 458; *Re Thomas*, 84 Ch. D. 166.

Freebench.

In the case of copyholds, the right to freebench depends on the custom of the manor. It is in general defeated by the owner's alienation in his lifetime or by will: 3 Pres. 366; Wms. R. P. 379; *Lacey* v. *Hill*, L. R. 19 Eq. 346; and does not attach to equitable interests: 3 Pres. 367.

Divorce.

The right to dower is lost by divorce: *Frampton* v. *Stephens*, 21 Ch. D. 164.

TENANTS IN TAIL.

Tenant in tail.

Power of disposition.

A tenant in tail of freeholds in possession can bar the entail and convey the fee simple or any less estate by a deed enrolled in Chancery within six months after execution, but cannot devise his estate by will, or bind it by contract (except under the Settled Land Act, 1882), even if the estate be equitable only; 3 & 4 Will. IV. c. 74, ss. 15, 40, 41, 47: see Wms. R. P. 56.

If the owner was married on or before the 1st of January, 1834, the grantee takes subject to the wife's right to dower: see p. 42.

A mere declaration of trust is not sufficient to bar an estate tail: *Green* v. *Paterson*, 32 Ch. D. 95.

Consent of protector.

Where an estate tail is preceded by a life interest, the consent of the protector must be given by the disentailing deed or by a previous or contemporaneous deed enrolled with or before the disentailing deed (ss. 42, 46); otherwise, only a base fee will be created, determinable by the

Chap. IV. Sect. I.

failure of issue of the tenant in tail, and the remainders and reversion will not be barred; see s. 34: Wms. R. P. 53.

The owner of the prior life estate is generally protector; see ss. 22–31: *Re Dudson*, 8 Ch. D. 628; unless a protector is appointed by the settlor under s. 32: see *Bell* v. *Holtby*, L. R. 15 Eq. 178; *Clarke* v. *Chamberlain*, 16 Ch. D. 176.

A prohibition against barring the entail is invalid: *Dawkins* v. *Penrhyn*, 6 Ch. D. 318; 4 App. Cas. 51.

S. L. Act, 1882.

Since the 1st of January, 1883, a tenant in tail in possession has also had the same statutory power of disposition as a tenant for life under the Settled Land Act, 1882, s. 58: see p. 45.

Copyholds.

In the case of copyholds, a grant to a man and the heirs of his body creates only a conditional fee, unless a custom to entail exists in the manor: 2 Pres. 29.

A legal tenant in tail of copyholds can bar the entail by surrender without enrolment: 3 & 4 Will. IV. c. 74, ss. 50, 54.

An equitable tenant in tail can bar the entail by surrender or deed entered on the court rolls within six months after execution: ss. 50, 53, 54; *Green* v. *Paterson*, 32 Ch. D. 95.

The consent of the protector (if any) has to be entered on the rolls at the same time or previously: 3 & 4 Will. IV. c. 74, ss. 51–54.

Leaseholds.

In the case of leaseholds, a person who has a quasi estate tail is considered as the absolute owner: 2 Pres. 173.

Special Estates tail.

Tenants in tail after possibility of issue extinct cannot bar their estates tail: 3 & 4 Will. IV. c. 74, s. 18; and for purposes of title are considered only as tenants for life: 1 Pres. 447; see Wms. R. P. 54.

But since the 1st of January, 1883, they have had, when in possession, the same statutory power of disposition as tenants for life under the Settled Land Act, 1882 (s. 58): see *infra*.

Descent.

On the death of a tenant in tail without having barred the entail, the estate descends to the heirs of the body of the donee in tail, according to the form of the gift: see 3 Pres. 1.

The course of descent is similar to that of an estate in fee simple, subject to the restrictions imposed by the terms of the gift: see Wms. R. P. 105.

Dower.

The heir takes subject to the widow's right to dower (if any) as in the case of a fee simple estate: Wms. R. P. 230; see *ante*, p. 42.

TENANTS FOR LIFE.

Tenant for life.

A tenant for his own life can assign his life estate, but any estate created by him determines on his death, unless created under a power: see Wms. R. P. 26.

Tenant pur autre vie.

A tenant *pur autre vie*, can assign his estate or devise it by will; and on his death intestate, it descends to his heir if named in the grant, otherwise to his personal representative: 1 Vict. c. 26, s. 6; Tud. L. C. 57.

A conditional limitation until bankruptcy or insolvency is valid: see *Nixon* v. *Verry*, 29 Ch. D. 196; *Re Levy*, 30 Ch. D. 119.

S. L. Act, 1882.

Since the 1st of January, 1883, a life tenant in possession of settled land has had power to sell the estate subject to the settlement, whatever its date, provided there are 'trustees of the settlement' for the purposes of the Act to whom the statutory notice can be given; S. L. Act, 1882, ss. 2, 3, 45: see *Hatten* v. *Russell*, 38 Ch. D. 334.

His conveyance to the extent to which it is expressed

Chap. IV. Sect. I.

or intended to operate under the Act, passes the land discharged from the settlement, but subject to existing incumbrances and to prior estates and charges (ss. 20, 50). The purchase money has to be paid to the 'trustees of the settlement' or into Court, at the option of the life tenant (ss. 22, 39): see *Re Orme & Hargreaves*, 25 Ch. D. 595.

The principal mansion house and the land usually occupied therewith cannot be sold without the consent of the 'trustees of the settlement' or an order of Court (s. 15).

Any prohibition or limitation against the exercise of the statutory power is void (ss. 51, 52).

The statutory power is not affected by the institution of an action for the administration of the estate: *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531.

But where the land is subject to a trust for sale, the life-tenant cannot sell under the power conferred by the Act without the leave of the Court: S. L. Act, 1884, s. 7.

TENANTS FOR YEARS.

Tenant for years.

A tenant for years (unless restrained by the lease) can assign or underlease his term or bequeath it by will, but cannot grant a longer term than he has; 2 Pres. 1, 2.

Life estate.

If he grants the term to one for life, the legal estate in the whole term vests in the life tenant, subject to determination by his death; 2 Pres. 2: see *Re Bellamy*, 25 Ch. D. 620.

Sub-lease.

If the termor makes an underlease for a shorter term, the original term remains in him; see *Re Russell Road Purchase Moneys*, L. R. 12 Eq. 83; but an underlease for the whole term amounts to an assignment: *Beardman* v. *Wilson*, L. R. 4 C. P. 57.

An underlease is not affected by the surrender of the lease: *G. W. R. Co.* v. *Smith*, 2 Ch. D. 235.

Enlargement.

As to the cases in which a long term may be enlarged

into a fee simple, see Conv. Act, 1881, s. 65; Conv. Act, 1882, s. 11; *Re Chapman and Hobbs*, 29 Ch. D. 1007.

Devolution on death.

On the death of a tenant for years, the term, although bequeathed by will, vests in the executor; but after his assent, the term vests in the legatee without any assignment, and he can confer a legal title: 3 Pres. 144. In recent transactions, however, the concurrence or written assent of the executor is regarded as essential to the validity of the legatee's assignment: 3 Pres. 145.

Where a tenant for years dies intestate, the term vests in his administrator on administration being granted; Wms. Ex. 637; and the next of kin seem not to acquire the legal estate without an assignment from him; Burton, 311.

As to the power of disposition of executors and administrators, see Chap. IV., sect. 4.

DONEES OF POWERS.

Donee of general power.

The donee of a general power of appointment by deed or will has the same power of disposition as a tenant in fee simple; Sug. Pow. 395, 398.

He may make the appointment at any time during his life: Sug. Pow. 261.

There must be some reference to the power or the property, except in the case of a will: Sug. Pow. 300; see *ante*, p. 21.

He may appoint to himself or his wife: Sug. Pow. 471; *Meade King* v. *Warren*, 32 Beav. 111; and a wife may appoint to her husband: *Wood* v. *Wood*, L. R. 10 Eq. 220.

Special power.

Appointments in exercise of a special power are only valid so far as they are in favour of objects of the power: Sug. Pow. 507.

Only such estates can be created as would have been

valid if inserted in the instrument creating the power: Sug. Pow. 396; *Re Brown and Sibly*, 3 Ch. D. 156; and in this respect, a power to appoint by will only has been treated as a special power: *Re Powell*, 18 W. R. 228; *contra*, *Rous* v. *Jackson*, 29 Ch. D. 521.

There must be some reference to the power or the property: Sug. Pow. 314; *Re Williams*, 42 Ch. D. 93.

Execution.

Where no mode of execution is prescribed, the appointment may be made by deed or will; Sug. Pow. 203.

But a power to appoint by deed is not duly exercised by will, nor can a power to appoint by will be exercised by deed: Sug. Pow. 209, 210.

Any consent required by the power must be obtained: Sug. Pow. 207.

All prescribed formalities must be strictly complied with: Sug. Pow. 206. But as to attestation of deeds, see *ante*, p. 19; and as to attestation of wills, see *ante*, p. 23.

Defective executions.

Defective executions of a power are aided in equity in favour of a wife, children, creditors, or purchasers, provided an intention to execute it appears clearly in writing: Sug. Pow. 533, 534, 550.

Examples:—

(1.) Contracts for value or covenants: Sug. Pow. 552, 553.

(2.) Wills instead of deeds: Sug. Pow. 558; *Bruce* v. *Bruce*, L. R. 11 Eq. 371.

(3.) Defects in attestation of instruments, other than wills: Sug. Pow. 559.

But the following defective executions are not aided:—

(1.) Wills insufficiently attested: 1 Vict. c. 26, s. 10; *Re Kirwan*, 25 Ch. D. 373.

(2.) Deeds instead of wills: Sug. Pow. 561.

Revocation.

An appointment by deed is irrevocable, unless it reserves a power of revocation: Sug. Pow. 387.

If a power of revocation is reserved and exercised, the original power is restored: Sug. Pow. 388.

Where the power is exercisable by will only, the appointment is revocable during the donee's life: Sug. Pow. 214.

Devolution in default of appointment.

If the power is not exercised, the estate devolves according to the limitations in default of appointment, unless the power is in the nature of a trust or contains a gift by implication: Sug. Pow. 596; *Richardson* v. *Harrison*, 16 Q. B. D. 85; *Wilson* v. *Duguid*, 24 Ch. D. 244.

Sect. II.

INCAPACITIES.

All persons are presumed to be capable of disposing of their property, except so far as they are disqualified by being aliens, convicts, outlaws, bankrupts, insolvent, liquidating or compounding debtors, infants, lunatics, idiots, or married women: see 1 Pres. 316.

ALIENS.

Alien.

Before the 12th of May, 1870, an alien could acquire real estate by purchase, but could not hold it against the Crown; and the Crown's rights were not defeated by his conveyance: Wms. R. P. 64. But if naturalized or made a denizen, he became capable of holding and disposing of real estate: Burton 59: see Dart, 28.

Since the 12th of May, 1870, an alien has been able to acquire, hold, and dispose of land in the same manner as a natural-born subject: 33 Vict. c. 14, s. 2; see *Sharp* v. *St. Sauveur*, L. R. 7 Ch. 343; *Bloxam* v. *Favre*, 8 P. D. 101; 9 P. D. 130; and see 35 & 36 Vict. c. 39, s. 3.

CONVICTS AND OUTLAWS.

Convict.

Before the 4th of July, 1870, a conviction for treason or felony caused a forfeiture of the convict's property to the Crown or mesne lord, either absolutely or for the convict's life: see Burton, 57, 58; Tud. L. C. 785; Dart, 15.

A conviction since the 4th of July, 1870, does not cause forfeiture; 33 & 34 Vict. c. 23, s. 1; but the convict is incapable of alienating so long as he has not completed his sentence or received pardon (ss. 7, 8); except as to property acquired while lawfully at large (s. 30).

Outlaw.

Outlawry causes a forfeiture of the outlaw's property to the Crown: Tud. L. C. 786: see 33 & 34 Vict. c. 23, s. 1.

BANKRUPTS.

Bankrupt under Acts of 1849 and 1861.

When a person was adjudged bankrupt under the Bankruptcy Act of 1849 or 1861 (*i.e.*, between the 11th of October, 1849, and the 31st of December, 1869, when both Acts were repealed by 32 & 33 Vict. c. 83, s. 20), all freeholds and leaseholds, belonging to him at the commencement of the bankruptcy or acquired before obtaining his certificate of conformity or discharge, vested in the assignees for the time being by virtue of their appointment without any conveyance: B. Act, 1849, ss. 141, 142; B. Act, 1861, s. 161; but after the 11th of October, 1861, the property vested in the creditors' assignee on his appointment: B. Act, 1861, s. 117; see *Buckland* v. *Papillon*, L. R. 2 Ch. 67; *Ex parte Carter*, 2 Ch. D. 806.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the assignees required registration within two months; B. Act, 1849, s. 143.

On a sale by the assignees before the 11th of October, 1861, the purchase-money had to be paid to the official

assignee: B. Act, 1849, s. 39; but after that day the purchase-money was payable to the creditors' assignee: B. Act, 1861, s. 127.

The bankrupt's rights were barred by the order of the Court that he should join in the conveyance, although he did not execute it: B. Act, 1849, s. 148.

The assignees could exercise the bankrupt's beneficial powers: B. Act, 1849, s. 147.

The bankrupt's copyholds did not vest in the assignees, but could be sold by the Court, the sale being carried out, before the 11th of October, 1861, by a deed enrolled in the court rolls: B. Act, 1849, s. 209; and after that day by a vesting order: B. Act, 1861, s. 114; the purchaser's title being completed in each case by admittance: see B. Act, 1849, s. 210.

Property acquired by the bankrupt after obtaining his discharge did not pass to the assignees: *Gibbins* v. *Eyden*, L. R. 7 Eq. 371.

If on the 16th of September, 1887, the estate was vested in a creditors' assignee, a subsequent order of the Court appointing the official assignee to be sole assignee vests the whole of the property in him alone: 50 & 51 Vict. c. 66, s. 4.

Bankrupt under Act of 1869.

When a person was adjudged bankrupt under the Bankruptcy Act, 1869 (*i.e.*, between the 1st of January, 1870, and the 31st of December, 1883, when it was repealed by the B. Act, 1883, s. 169), all freeholds, leaseholds and copyholds, belonging to him at the commencement of the bankruptcy or acquired during its continuance, vested in the registrar as trustee until a trustee was appointed by the creditors, and passed to the trustee for the time being, without any conveyance: B. Act, 1869, ss. 15, 17, 83.

Accordingly, the bankrupt could neither convey any estate to a purchaser nor give a discharge for the purchase-money: see *Ex parte Rabbidge*, 8 Ch. D. 367.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the trustee required registration (s. 83).

The trustee had power to sell the property and give a discharge for the purchase-money (s. 25), and could dispose of copyholds without being admitted (s. 22).

The trustee could exercise the bankrupt's beneficial powers (ss. 15, 25), but not after the bankrupt's death: *Nichols to Nixey*, 29 Ch. D. 1005.

A disclaimer by the trustee of leaseholds operated as a surrender of the lease (s. 23); destroying equitable interests created by the bankrupt: *Taylor* v. *Gillott*, L. R. 20 Eq. 682; but not affecting legal underleases: *Smalley* v. *Hardinge*, 7 Q. B. D. 524.

As to the effect of disclaimer by the trustee of the bankrupt's freeholds, see *Re Mercer and Moore*, 14 Ch. D. 287.

Property acquired by the bankrupt after the close of the bankruptcy or after obtaining his discharge, did not vest in the trustee: *Re Pettit*, 1 Ch. D. 478; *Ebbs* v. *Boulnois*, L. R. 10 Ch. 484.

Any property outstanding in the trustee at the close of the bankruptcy and remaining undistributed after 1883, vested in the person appointed by the Board of Trade for that purpose: B. Act, 1883, s. 160; viz., the official receiver attached to the Court having jurisdiction over the bankruptcy: *Bd. of T. Order of* 1*st January*, 1884.

If, after 1883, a registrar was the trustee in a pending bankruptcy, the property vested in the official receiver appointed by the Board of Trade for that purpose: B. Act, 1883, s. 161; viz., the official receiver attached to the Court having jurisdiction over the bankruptcy: *Bd. of T. Order of* 1*st January*, 1884.

Every bankruptcy under the Act of 1869, pending on the 31st of December, 1887, became closed on that day, in the absence of an order of the Court to the contrary: 50 & 51 Vict. c. 66, s. 3.

Bankrupt under Act of 1883.

When a person is adjudged bankrupt under the Bankruptcy Act, 1883 (*i.e.*, after 1883), all freeholds, leaseholds, and copyholds belonging to him at the commencement of the bankruptcy, or acquired before his discharge, vest in the official receiver as trustee until a trustee is appointed by the creditors, and pass to the trustee for the time being, without any conveyance: B. Act, 1883, ss. 20, 21, 44, 54; see *Ex parte Bd. of Trade*, 15 Q. B. D. 196.

Accordingly, the bankrupt can neither convey any estate to a purchaser, nor give a discharge for the purchase-money: see *Ex parte Rabbidge*, 8 Ch. D. 367.

If there is any property in Middlesex or Yorkshire, the certificate of appointment of the trustee requires registration (s. 54).

The trustee has power to sell the property and give a discharge for the purchase-money (s. 56): see *Turquand* v. *Bd. of Trade*, 11 App. Cas. 286; and can dispose of copyholds without being admitted (s. 50).

The trustee can exercise the bankrupt's beneficial powers (ss. 44, 56); but not after the bankrupt's death: see *Nichols to Nixey*, 29 Ch. D. 1005; nor where the bankrupt is a married woman: *Ex parte Gilchrist*, 17 Q. B. D. 521.

A disclaimer by the trustee of leaseholds determines the rights and interests of the bankrupt therein, without affecting the rights of a sub-lessee or any other person (s. 55); and the Court has power by a vesting order under that section to vest the property in any person interested therein without any conveyance or assignment, and to exclude any mortgagee or sub-lessee declining to accept a vesting order: see *Re Finley*, 21 Q. B. D. 475.

An order for the administration in bankruptcy of a deceased debtor's estate has a similar effect to an order of adjudication, and vests the debtor's property in the official receiver as trustee (s. 125).

INSOLVENT DEBTORS.

Insolvent debtor under Act of 1838.

When a petition was filed by a person imprisoned for debt, or by his creditors, and a vesting order was made under the Insolvent Debtors' Act, 1838 (repealed by the B. Act, 1861, s. 230), all the debtor's property and all his future right in property acquired before becoming entitled to his final discharge, according to the adjudication, or (if no adjudication) before obtaining his full discharge from custody, vested in the provisional assignee until assignees were appointed by the Court, and passed to the assignees for the time being, without any conveyance: 1 & 2 Vict. c. 110, ss. 37, 45, 65; see *Ex parte Pain*, L. R. 3 Ch. 639. But the property was liable to be divested by dismissal of the petition or by the bankruptcy of the debtor within two months (ss. 37, 39).

If there was any property in Middlesex or Yorkshire, a certified copy of the vesting order and of the appointment of assignees required registration within two months (s. 46).

The assignees could sell the property (including copyholds) by public auction, with the consent of the majority of the creditors (s. 47); and could exercise the debtor's beneficial powers (s. 49).

Under Act of 1842.

When a petition for protection was filed by a debtor under the Insolvent Debtors' Act 1842 (repealed by the B. Act 1861, s. 230), the debtor's property vested in the official assignee nominated by the commissioners, and on the final order for protection being made, the debtor's then present and future property vested in the official assignee and assignee chosen by the creditors, and passed to the assignees for the time being, without any conveyance: 5 & 6 Vict. c. 116, ss. 1, 7, 9; 7 & 8 Vict. c. 96, ss. 4, 10; see *Ex parte Welchman*, 11 Ch. D. 48.

But if the petition was dismissed, the property re-vested in the debtor: 7 & 8 Vict. c. 96, s. 10.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the assignees required registration within two months: 5 & 6 Vict. c. 116, s. 8.

The assignees had the same power of sale as assignees in bankruptcy; see Rules of 1st Nov. 1842, Shel. Insolv. 284; the proceeds being received by the official assignee; see 7 & 8 Vict. c. 96, s. 4; and could exercise the debtor's beneficial powers (s. 11).

The jurisdiction under this Act was first given to the Court of Bankruptcy, but was transferred on the 15th of September, 1847, to the Court for the relief of insolvent debtors: see 10 & 11 Vict. c. 102, s. 4.

Close of insolvency.

Every pending insolvency became closed on the 1st of January, 1871, or at the expiration of 20 years from the filing of the petition (whichever last happened), in the absence of an order of the Court to the contrary; and thereupon the insolvent or his representatives acquired the same rights as if he had been bankrupt and had obtained his discharge under the Bankruptcy Act, 1869; 32 & 33 Vict. c. 83, s. 15; see *Re Clagett*, 20 Ch. D. 637.

If, on the 16th of September, 1887, the estate was vested in a creditors' assignee, either alone or jointly with the official assignee, a subsequent order of the Court appointing the official assignee to be sole assignee vests the whole of the property in him alone: 50 & 51 Vict. c. 66, s. 4.

Insolvency in Australia does not divest the debtor's land in England: see *Re Levy*, 30 Ch. D. 119.

LIQUIDATING DEBTORS.

Liquidating debtor.

When a debtor presented a petition for liquidation of his affairs by arrangement or composition, and a special resolution for liquidation was passed by his creditors and

Chap. IV. Sect. II.

registered under the 125th section of the Bankruptcy Act, 1869, the property belonging to the debtor at the commencement of the liquidation or acquired during its continuance, vested in the registrar as trustee until a trustee was appointed by the creditors, and passed to the trustee for the time being, without any conveyance: B. Act, 1869, s. 125: see *Ex parte Duignan*, L. R. 6 Ch. 605; *Re Waddell*, 2 Ch. D. 172.

If there was any property in Middlesex or Yorkshire, the certificate of appointment of the trustee required registration: see s. 125 (6).

The trustee had the same power of disposition as a trustee in bankruptcy: see s. 125 (7).

Property acquired by the debtor after his discharge or the close of the liquidation, did not vest in the trustee: *Ebbs* v. *Boulnois*, L. R. 10 Ch. 479; *Ex parte Wainwright*, 19 Ch. D. 140.

The property vested in the trustee was not divested by his release, nor by the close of the liquidation or discharge of the debtor: *Ex parte Witt*, W. N. 1879, 142.

Any property outstanding in the trustee at the close of the liquidation and remaining undistributed after 1883, vests in the person appointed by the Board of Trade for that purpose: B. Act, 1883, s. 160; viz., the official receiver attached to the Court having jurisdiction over the liquidation: *Bd. of T. Order of 1st January*, 1884.

If, after 1883, there is no trustee acting in a pending liquidation, the property vests in the official receiver appointed by the Board of Trade for that purpose, until the appointment of a new trustee: B. Act, 1883, s. 159.

COMPOUNDING DEBTORS.

Compounding debtor. Under B. Act, 1869.

When a debtor presented a petition for liquidation of his affairs by arrangement or composition, and an extraordinary resolution for a composition was passed by the creditors and registered under the 126th section of the

Bankruptcy Act, 1869, the debtor remained entitled to his property, with full power of disposition, notwithstanding the appointment of a trustee: *Re Kearley & Clayton*, 7 Ch. D. 615; *Re McHenry*, 21 Q. B. D. 580.

Under B. Act, 1883.

When a bankruptcy petition is presented under the Bankruptcy Act, 1883, and a special resolution for a composition is passed and confirmed by the creditors and approved by the Court under the 18th section, the debtor's property seems to vest in the trustee (if any) without any conveyance (sub-s. 13); but if no trustee is appointed, the provisions divesting the debtor's estate seem not to apply.

INFANTS.

Infant's conveyance.

An infant's conveyance is voidable by himself or his heirs, unless made in pursuance of a custom or statutory power: 1 Pres. 319; Wms. R. P. 66; see *Burnaby* v. *Equitable, &c., Soc.*, 28 Ch. D. 416.

So, he cannot exercise a beneficial power over real estate; although he can exercise a power simply collateral: Sug. Pow. 177; see *Re Cardross*, 7 Ch. D. 728; *Re D'Angibau*, 15 Ch. D. 228.

Will.

An infant has no power of disposition by will: 1 Vict. c. 26, s. 7; Sug. Pow. 178.

Sale by court.

An infant's freehold or leasehold land is deemed to be a settled estate within the Settled Estates Act, 1877: Conv. Act, 1881, s. 41; so that a sale can be effected under an order of the Court: *Re Liddell*, W. N. 1882, 183; see *post*, sect. 4.

S. L. Act, 1882.

An infant owner in possession is deemed a tenant for life for the purposes of the Settled Land Act, 1882 (s. 59): so that a sale can be effected by the "trustees of the settlement" (s. 60): see *Re Dudley*, 35 Ch. D. 338; and see *ante*, p. 45.

Chap. IV. Sect. II.

As to settlements by infants under the Act, 18 & 19 Vict. c. 43, see *Re Sampson & Wall*, 25 Ch. D. 482; *Buckmaster* v. *Buckmaster*, 35 Ch. D. 21; 13 App. Cas. 61.

Land vested in an infant upon trust or by way of mortgage may be passed by a vesting order: see Wms. R. P. 67: and see *ante*, p. 27.

LUNATICS AND IDIOTS.

Lunatic or idiot.

A lunatic or idiot has no power of disposition: 1 Pres. 327, 330; Wms. R. P. 66; see *Manning* v. *Gill*, L. R. 13 Eq. 485; *Smee* v. *Smee*, 5 P. D. 84.

But in certain cases, a sale can be effected by the committee of a lunatic, with the sanction of the Court of Lunacy, under the Lunacy Regulation Act, 1853: see *Re Corbett*, L. R. 1 Ch. 516.

Where a lunatic is tenant for life, his committee can sell the fee with the sanction of the Court of Lunacy under the Settled Land Act, 1882 (s. 62): see *Re Ray*, 25 Ch. D. 464.

Land vested in a lunatic upon trust or by way of mortgage may be passed by a vesting order of the Court of Lunacy: see Wms. R. P. 67.

MARRIED WOMEN.

Married woman's conveyance. Freeholds.

A married woman can only convey her freeholds (other than separate estate) by acknowledged deed with her husband's concurrence: see 3 & 4 Will. IV. c. 74, s. 77; Dart, 643; *Williams* v. *Walker*, 9 Q. B. D. 576: and see *Franks* v. *Bollans*, L. R. 3 Ch. 717.

Exceptions:—

(1.) Where an order dispensing with the husband's concurrence has been made under the 91st section of the

Fines and Recoveries Act, she can convey without acknowledgment: *Goodchild* v. *Dougal*, 3 Ch. D. 650; in which case, her conveyance is subject to her husband's rights: *Fowke* v. *Draycott*, 29 Ch. D. 996.

(2.) She can exercise a power by unacknowledged deed without her husband's concurrence: 3 & 4 Will. IV. c. 74, s. 78; Sug. Pow. 154; see ante, p. 47.

A deed barring her estate tail requires acknowledgment and her husband's concurrence: 3 & 4 Will. IV. c. 74, s. 40.

The husband's bankruptcy does not prevent him from concurring in her acknowledged deed: *Cooper* v. *Macdonald*, 7 Ch. D. 288; *Re Jakeman*, 23 Ch. D. 344.

Copyholds.

The wife's legal estate in copyholds (unless within the M. W. P. Act, 1882), can only be conveyed by surrender with the concurrence of her husband, she being separately examined: 1 Pres. 340; see 3 & 4 Will. IV. c. 74, s. 77.

But her equitable estates can be conveyed either in that way or by acknowledged deed: 3 & 4 Will. IV. c. 74, ss. 77, 90; see Dart, 648.

Leaseholds.

The wife's legal terms of years (other than separate estate), can be assigned by the husband alone: 1 Pres. 343; *Heron* v. *Heron*, W. N. 1887, 158; except when her interest is reversionary and cannot possibly vest in possession during the coverture: *Duberley* v. *Day*, 16 Beav. 33.

But his assignment of her equitable terms seems not to defeat her equity to a settlement, without her concurrence and acknowledgment: see Dart, 10; and see *Boxall* v. *Boxall*, 27 Ch. D. 220.

Will.

A married woman cannot dispose of her real estate by will, unless it is her separate property or subject to her appointment: 1 Vict. c. 26, s. 8; *Willock* v. *Noble*, L. R. 7 H. L. 589; *Dye* v. *Dye*, 13 Q. B. D. 147.

Separate Estate.

Unless restrained from anticipation, a married woman can pass the beneficial interest in her separate estate by unacknowledged deed or will: *Taylor* v. *Meads*, 4 D. G. J. & S. 597; *Pride* v. *Bubb*, L. R. 7 Ch. 64.

Where the legal estate is vested in trustees, they and the married woman together can convey without her husband's concurrence or an acknowledged deed: *Taylor* v. *Meads*, 4 D. G. J. & S. 604. But if no trustees are interposed, the legal estate cannot be passed without the husband's concurrence and (in the case of freeholds) an acknowledged deed; see *Johnson* v. *Johnson*, 35 Ch. D. 349; except in the case of separate property under the Act of 1882, which can be conveyed by a married woman as a *feme sole*: M. W. P. Act, 1882, s. 1.

If restrained from anticipation, she cannot dispose of her separate estate during coverture: *Stanley* v. *Stanley*, 7 Ch. D. 589; unless the restraint is removed by an order of the Court under the Conv. Act, 1881, s. 39; and see M. W. P. Act, 1882, s. 19.

The restraint does not prevent her from barring her estate tail: *Cooper* v. *Macdonald*, 7 Ch. D. 288; or from exercising the statutory powers of a life-tenant under the S. L. Act, 1882, s. 61.

Her will of separate property made during coverture is not affected by her surviving her husband: *Bishop* v. *Wall*, 3 Ch. D. 194; but does not pass property acquired after his death; *Re Price*, 28 Ch. D. 709.

The separate estate of a married woman consists of:—

(1.) Property devised or settled to her separate use: see *Dye* v. *Dye*, 13 Q. B. D. 156.

(2.) Property purchased by wages or earnings acquired by her between the 9th of August, 1870, and the end of 1882: M. W. P. Act, 1870, s. 1 (rep. by M. W. P. Act, 1882, s. 22).

(3.) If married since the 9th of August, 1870, all personal estate coming to her before 1883 as next of kin of an intestate (unless settled): M. W. P. Act, 1870, s. 7 (rep. by M. W. P. Act, 1882, s. 22); see *Re Voss*, 13 Ch. D. 504.

(4.) If married since the 9th of August, 1870, the rents and profits of freeholds and copyholds descending upon her before 1883 as heiress of an intestate (unless settled): M. W. P. Act, 1870, s. 8 (rep. by M. W. P. Act, 1882, s. 22); see *Johnson* v. *Johnson*, 35 Ch. D. 345.

(5.) If married before 1883, all real and personal property her title to which accrues after 1882 (unless settled): M. W. P. Act, 1882, ss. 5, 19; see *Reid* v. *Reid*, 31 Ch. D. 402; *Hancock* v. *Hancock*, 38 Ch. D. 78.

(6.) If married after 1882, all real and personal property belonging to her on marriage or subsequently acquired (unless settled): ss. 2, 19; see *Re Onslow*, 39 Ch. D. 622.

Bare trustee.

Since the 7th of August, 1874, a married woman being a bare trustee of freeholds or copyholds, has been able to convey or surrender them as a *feme sole*, without her husband's concurrence or acknowledgment: V. & P. Act, 1874, s. 6: *Re Docwra*, 29 Ch. D. 693; see *Morgan* v. *Swansea, &c., Authority*, 9 Ch. D. 582.

Devolution. Leaseholds.

On the death of a married woman intestate, her leaseholds (including separate estate) vest in her husband in his marital right, without letters of administration: 1 Pres. 343; *Re Bellamy*, 25 Ch. D. 620; see *Re Lambert*, 39 Ch. D. 626.

Freeholds and copyholds.

But her freeholds and copyholds of inheritance (including separate estate), descend to her heir, subject to her husband's life estate by the curtesy (if any): *Dye* v. *Dye*, 13 Q. B. D. 147; *Eager* v. *Furnivall*, 17 Ch. D. 115.

It is conceived that her separate estate under the Act of 1882 devolves in the same way, notwithstanding sect. 23: see *Re Lambert*, 39 Ch. D. 626.

Chap. IV. Sect. II.

Curtesy.

The husband is entitled to curtesy in his wife's freeholds, provided the following circumstances concur:—

(1.) The wife, or the husband in her right, must at some time during the coverture have been solely seised in possession of the legal or equitable estate;

(2.) The estate must have been one which her issue by him might inherit;

(3.) There must have been such issue born alive: see 3 Pres. 380—384.

Separate estate, if disposed of by the wife's deed or will, is not liable to curtesy: *Cooper* v. *Macdonald*, 7 Ch. D. 288.

In gavelkind lands, the right to curtesy does not depend on issue being born, but is limited to a moiety, and ceases on remarriage: Rob. Gav. 78; see *Re Hobbs*, 36 Ch. D. 553.

In the case of copyholds, the right to curtesy depends on the custom of the manor; see 3 Pres. 380.

Divorce.

Divorce puts an end to the husband's marital rights: *Wilkinson* v. *Gibson*, L. R. 4 Eq. 162; but does not affect his rights under a settlement: *Fitzgerald* v. *Chapman*, 1 Ch. D. 563; *Burton* v. *Sturgeon*, 2 Ch. D. 318.

Judicial separation.

Judicial separation makes the wife a *feme sole* in respect of after-acquired property so long as the order stands: 20 & 21 Vict. c. 85, s. 25; 21 & 22 Vict. c. 108, s. 8; see *Waite* v. *Morland*, 38 Ch. D. 135.

Protection order.

A protection order has a similar effect: 20 & 21 Vict. c. 85, s. 21; 21 & 22 Vict. c. 108, s. 8; see *Re Coward & Adam*, L. R. 20 Eq 179.

Invalid marriage.

Where a marriage appears to be invalid, the woman must be treated as a *feme sole:* see 5 & 6 Will. IV. c. 54; and see Dart, 13.

Widow.

If the wife survives her husband, all her real and leasehold estates, not disposed of in his lifetime, remain in her, notwithstanding any attempted devise by his will:

1 Pres. 343; Wms. R. P. 225; and the coverture being at an end, she has an absolute power of disposition over her property: see *Re Price*, 28 Ch. D. 711.

SECT. III.

CO-OWNERSHIP.

The power of disposition may be modified by the property belonging to several persons in co-ownership, as tenants by entireties, co-parceners, joint-tenants, or tenants in common.

TENANTS BY ENTIRETIES.

Tenants by entireties.

A grant to husband and wife, taking effect before 1883, makes them tenants by entireties: Wms. R. P. 224. But such a grant taking effect after 1882, creates a joint-tenancy by reason of the M. W. P. Act, 1882: *Re March*, 27 Ch. D. 166.

Freeholds.

Where husband and wife are seised of freeholds by entireties, the husband cannot alienate any part without the consent of the wife; but in the case of leaseholds he alone can dispose of the whole: 2 Pres. 41, 43.

Leaseholds.

Survivorship.

A tenant by entireties has no devisable interest, but the title is traced through the survivor: 2 Pres. 57.

Under a gift to husband and wife and others jointly, the husband and wife take only one share: Wms. R. P. 224; unless a contrary intention is shown: *Re Dixon*, W. N. 1889, 142; and this rule is not altered by the M. W. P. Act, 1882: *Re Jupp*, 39 Ch. D. 148.

CO-PARCENERS.

Co-parceners.

Co-heiresses hold in co-parcenary, and each one can dispose of her own share, by deed or will, and on her

death intestate it descends to her heir: 2 Pres. 69; Wms. R. P. 112.

JOINT-TENANTS AND TENANTS IN COMMON.

Joint-tenants.

A joint-tenant can dispose of his own share in his lifetime, but cannot devise it by will; 2 Pres. 62, 66; Burton, 93; so that if a joint-tenant dies without severing the joint-tenancy, the surviving joint-tenants become entitled to the whole: 2 Pres. 57.

Survivorship.

Severance.

If a joint-tenant conveys his whole interest to a stranger, the joint-tenancy is severed, and the grantee becomes tenant in common with the remaining joint-tenants, whose joint-tenancy continues between themselves: 2 Pres. 58, 60.

A lease for years by one joint-tenant severs the tenancy if the property is leasehold, but not if it is freehold: 2 Pres. 58, 60.

A contract for sale by one joint-tenant effects an equitable severance only: Tud. L. C. 890; see *Re Wilford*, 11 Ch. D. 267.

Partners.

Where land is conveyed to partners as joint-tenants, for the purposes of trade, although the legal estate devolves to the surviving partner, he is regarded in equity as a trustee of the share of the deceased partner: see Dart, 94, 1049.

Tenants in common.

A tenant in common can convey his own share in his lifetime or devise it by will: 2 Pres. 77.

There is no survivorship; so that on his death intestate, his share, if of inheritance, descends to his heir, or in the case of a term devolves to his personal representative: see Tud. L. C. 893.

Sale in partition suit.

Where an estate is vested in several persons as joint-tenants or tenants in common, the entirety can be sold under an order of the Court in a partition suit, notwith-

standing the dissent or disability of any person interested who is a party to the suit: see 31 & 32 Vict. c. 40, ss. 3—5; his estate being passed by a vesting order: see s. 7; *Basnett* v. *Moxon*, L. R. 20 Eq. 182; *Beckett* v. *Sutton*, 19 Ch. D. 646.

Sect. IV.

POWERS OF FIDUCIARY AND CORPORATE OWNERS.

Under this head, it is proposed to consider the power of disposition possessed by mortgagees, executors, and administrators, trustees, building societies, joint stock companies and railway companies.

MORTGAGEES.

Mortgagees.

A mortgagee can transfer the mortgage by deed, subject to the existing equity of redemption, but cannot pass an absolute estate, except in the exercise of a power of sale, which may be express or implied: see *Re Ebsworth & Tidy*, 42 Ch. D. 50.

Power of sale.

A power of sale is implied in all mortgages by deed executed since the 28th of August, 1860: see 23 & 24 Vict. c. 145, ss. 11—15 (rep. by Conv. Act, 1881, s. 71); Conv. Act, 1881, ss. 19—22.

An equitable mortgagee cannot pass the legal estate vested in the mortgagor: *Re Hodson & Howes*, 35 Ch. D. 668; except under the power of sale given by 23 & 24 Vict. c. 145: see *Re Solomon & Meagher*, 40 Ch. D. 508.

In order that the exercise of a power of sale may confer a good title, the security must be subsisting at the time of sale, and the provisions of the power as to notice must have been complied with, unless the purchaser is protected by the terms of the power, as in *Dicker* v.

Angerstein, 3 Ch. D. 600. He is not protected if he knows of an irregularity: see *Selwyn* v. *Garfit*, 38 Ch. D. 273.

If the power is expressly exercisable by assigns, it may be exercised by a transferee or his representatives: see Fisher, 461—2.

Devolution of debt.

On the death of the mortgagee, the right to the mortgage debt vests in his personal representative: 2 Pres. 219.

Devolution of estate.

Up to the end of 1881, a mortgagee could devise the estate, and mortgage estates of inheritance not disposed of by will descended like beneficial estates to the heir: see 2 Pres. 219; Wms. R. P. 420.

But after the 7th of August, 1874, the personal representative of a mortgagee of freeholds, or of copyholds to which the mortgagee had been admitted, could reconvey or surrender on payment of all sums secured: V. & P. Act, 1874, s. 4 (repealed in cases of death after 1881 by the Conv. Act, 1881, s. 30). This enactment did not enable the personal representative to transfer the mortgage: *Re Spradbery*, 14 Ch. D. 514; nor to convey to a purchaser under the power of sale: *Re White*, 29 W. R. 820.

In cases of death after 1881, estates of inheritance vested in a mortgagee devolve to his personal representative, notwithstanding any devise: Conv. Act, 1881, s. 30: see *Re Pilling*, 26 Ch. D. 432. But on the 16th of September, 1887, this section ceased to apply to copyholds vested in a tenant on the court rolls by way of mortgage: 50 & 51 Vict. c. 73, s. 45; see *Re Mills*, 37 Ch. D. 312.

Joint account.

Where a mortgage is made to several persons as joint-tenants, and one dies, the estate vests in the survivors; but in the case of mortgages made before 1882, the survivors cannot give a discharge for the mortgage debt,

unless the deed contains a proper joint-account clause: see Fisher, 743.

In mortgages made after 1881, to several persons jointly, a joint-account clause is not needed, as a power for the survivor to give receipts is implied: Conv. Act, 1881, s. 61.

EXECUTORS AND ADMINISTRATORS.

Executor's power to sell leaseholds.

An executor can sell his testator's leaseholds, although bequeathed by the will, so long as he has not assented to the bequest: 3 Pres. 144; Dart, 673; see *Hood* v. *Barrington*, L. R. 6 Eq. 218. But he cannot compel a purchaser to complete before probate: Sug. 668.

He can sell even 20 years after the testator's death: *Re Whistler*, 35 Ch. D. 561.

His receipt is a good discharge for the purchase-money, unless the purchaser has notice that there are no debts: 3 Pres. 267.

One of several executors can assign the whole term: 2 Pres. 22; Dart, 652.

The executor's power of sale is not taken away by an administration suit, so long as there is no injunction or receiver: Sug. 669; *Berry* v. *Gibbons*, L. R. 8 Ch. 747.

Devolution.

On the death of one of several executors, the testator's leaseholds vest in the survivors: Wms. Ex. 916.

If the sole or surviving executor dies after proving, without having disposed of a term in his lifetime or assented to a bequest thereof, it vests in his executor; but if he dies intestate, it does not pass to his representative, but an administrator *de bonis non* of the original testator has to be appointed to make a title: see Wms. Ex. 258.

Should the executor, however, be also appointed trustee of the term and assent to the bequest, the term would cease to be part of the assets and would therefore pass to

his own personal representative: see Wms. Ex. 1385; Lewin, 223.

Since the 1st of January, 1858, renunciation of probate by an executor causes his rights to cease and the representation to the testator to devolve as if he had not been appointed: 20 & 21 Vict. c. 77, s. 79.

Since the 2nd of August, 1858, the death of an executor without proving produces the same effect: 21 & 22 Vict. c. 95, s. 16.

If all the executors renounce, the testator's leaseholds vest in the administrator with the will annexed: *Wyman* v. *Carter*, L. R. 12 Eq. 309.

Administrator's power to sell.

An administrator, after the grant of the letters of administration, has the same power of disposition *inter vivos* as an executor: Wms. Ex. 929, 965.

An administrator *durante minore ætate* has the same power of disposition as an ordinary administrator: *Re Cope*, 16 Ch. D. 49.

Devolution.

If an adminstrator dies without having disposed of a term in his lifetime, it does not pass to his representatives, but an administrator *de bonis non* of the intestate has to be appointed to make a title: Wms. Ex. 481, 965.

Executor's power to sell real estate.

An executor has power to sell his testator's real estate in the following cases:—

(1.) Where the will contains a direction for him to sell, although not accompanied by a devise to him: Sug. Pow. 113; *Hamilton* v. *Buckmaster*, L. R. 3 Eq. 323.

(2.) Where the estate is devised to him charged with debts: *Corser* v. *Cartwright*, L. R. 7 H. L. 731; no inquiry as to the existence of debts being necessary if the sale takes place within 20 years of the testator's death: *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465.

(3.) Where the will, if coming into operation before the 13th of August, 1859, contains a charge of debts but

the land is so settled that the devisees cannot sell: *Robinson* v. *Lowater*, 5 D. M. & G. 272; see Sug. 662 n.; Dart, 694.

(4.) Where the will, if coming into operation since the 13th of August, 1859, contains a charge of debts or legacies, without an absolute devise of the land to trustees: 22 & 23 Vict. c. 35, s. 16; see Dart, 695. But this section does not apply where there is a beneficial devise of the whole estate (s. 18): see Dart, 700.

(5.) Where the will contains a direction for sale, without the land being devised or the persons by whom the sale is to be made being named, the executor has the power of sale by implication, if the proceeds are distributable by him, either for payment of debts or legacies: 2 Pres. 264; Sug. Pow. 118; see *Re Sankey*, W. N. 1889, 79.

An administrator with the will annexed has no implied power to sell real estate: *Re Clay & Tetley*, 16 Ch. D. 3.

Power to convey land sold by testator.

Where a person, dying after 1881, has contracted to sell his freehold estate of inheritance, his executor or administrator has power to convey for the purpose of giving effect to the contract, if subsisting at the death and enforceable against the heir or devisee: see Conv. Act, 1881, s. 4; see Dart, 294.

TRUSTEES.

Trustees for sale.

Trustees for sale cannot sell before the time fixed by their trust or power: Dart, 70; *Carlyon* v. *Truscott*, L. R. 20 Eq. 348.

Where the trust property is an undivided share or other partial interest, they may join with the other owners in selling, provided they apportion the price themselves before completion, and receive their share: *Re Cooper & Allen*, 4 Ch. D. 802; and see Conv. Act, 1881, s. 35.

Depreciatory conditions of sale are no objection to the

title in the case of sales made by trustees since the 24th of December, 1888: see 51 & 52 Vict. c. 59, s. 3.

Power to give receipts.

Trustees can only confer a good title where they have power to give a receipt for the purchase-money; if there is no such power, the concurrence of the beneficiaries is necessary: 2 Pres. 220.

A power to give receipts is implied in the following cases:—

(1.) Where there is a trust for payment of debts generally, either with or without legacies, but not where the trust is for payment of specified debts or of legacies only: 2 Pres. 221; Sug. 658; Dart, 673.

(2.) Where the trusts require the purchase-money to be paid to the trustees to be invested by them: 2 Pres. 222; Sug. 659.

(3.) Where the purchase-money is payable to them upon an express or implied trust created since the 13th of August, 1859: 22 & 23 Vict. c. 35, s. 23.

(4.) Before 1882, where the purchase-money was payable to them by reason or in the exercise of a trust or power created after the 28th of August, 1860: 23 & 24 Vict. c. 145, s. 29 (rep. by the Conv. Act, 1881, s. 71).

(5.) Since the 1st of January, 1882, where the purchase-money is payable to them under any trust or power, whenever created: Conv. Act, 1881, s. 36.

All the trustees must join in the receipt, as well as in the conveyance of the estate: 2 Pres. 224.

Where trustees have power to give receipts, the trusts of the proceeds of sale are generally regarded as immaterial: 1 Pres. 135; and if declared by a separate deed, its production cannot usually be required: Sug. 418; but see Dart, 365.

But in the case of a power of sale exercised after 1882, the trusts of the proceeds are material by reason of the 56th section of the Settled Land Act, 1882: see *infra*.

Duration of power.

A trust for sale is not put an end to by all the beneficiaries becoming absolutely entitled: *Biggs* v. *Peacock*, 22 Ch. D. 284; *Re Tweedie & Miles*, 27 Ch. D. 315.

A power of sale is exercisable as long as a settled estate is subsisting in any part of the property: *Re Brown*, L. R. 10 Eq. 349; but cannot be exercised after all the beneficiaries have acquired absolute interests: Sug. Pow. 859, 860; unless a contrary intention is shown in the instrument creating the power: *Re Cotton & L. S. Bd.*, 19 Ch. D. 624.

Consent of life-tenant.

If a person is appointed by the instrument creating the power to consent to its exercise, such consent must be obtained: Sug. Pow. 252.

A power of sale in an instrument executed after the 28th of August, 1860, when no such person was appointed, could not be exercised before 1883 without the consent of the person entitled to the rents, if *sui juris*, unless it appeared from the instrument to have been intended that a sale should be made without such consent: 23 & 24 Vict. c. 145, s. 10 (rep. by the S. L. Act, 1882, s. 64).

Since the 1st of January, 1883, trustees have been unable to exercise a power of sale without the consent of the tenant for life: see S. L. Act, 1882, s. 56; but if there are several life-tenants, the consent of one of them is sufficient: S. L. Act, 1884, s. 6.

An absolute trust for sale may be executed without the concurrence of the tenant for life: S. L. Act, 1884, s. 6; see *Taylor* v. *Poncia*, 25 Ch. D. 646; but the trust cannot be executed if the Court has made an order giving the tenant for life leave to exercise the power of sale conferred by sect. 63 of the Act of 1882: see S. L. Act, 1884, s. 7.

Administration suit.

After the institution of a suit to administer the trusts,

the trustees cannot sell without the leave of the Court: Sug. 63.

Sale by Court.

It is essential to the validity of a sale under an order of the Court that the terms of the order be complied with: Sug. 110; *Berry* v. *Gibbons*, L. R. 15 Eq. 150.

The order seems to bind all equities: see *Basnett* v. *Moxon*, L. R. 20 Eq. 184; Conv. Act. 1881, s. 70.

Under Settled Estates Act.

Where a settled estate is sold by the Court under the Settled Estates Act, 1856 or 1877, a conveyance by the person directed by the Court to convey, takes effect as if the settlement had contained a power enabling him to effect the sale, so as to operate by revocation and appointment of the use: see S. E. Act, 1856, s. 15; S. E. Act, 1877, s. 22; and cannot be invalidated as against a purchaser for want of any concurrence or consent required by the Act: see Conv. Act, 1881, s. 70; *Re Hall Dare*, 21 Ch. D. 41. The purchase-money has to be paid into Court or to trustees approved by the Court: S. E. Act, 1856, s. 23; S. E. Act, 1877, s. 34.

Statutory power of sale.

Trustees have a statutory power of sale in the following cases:—

(1.) Where they are trustees of a settlement for the purposes of the Settled Land Act, 1882, and the life-tenant is an infant: S. L. Act, 1882, s. 60; see *ante*, p 57.

(2.) Where an estate is devised to them, charged with debts or legacies, without any provision for raising the same, by a will coming into operation since the 13th of August, 1859: 22 & 23 Vict. c. 35, ss. 14, 15; see Dart, 696.

New trustees

New trustees, duly appointed under a power contained in a deed or will, are considered to have the same power of disposition as the original trustees: see Lewin, 670; and this is expressly so provided as to trustees appointed under the statutory powers conferred by 23 & 24 Vict. c.

145, s. 27, and the Conv. Act, 1881, s. 31; but (except in cases where they have power to appoint a use), they cannot pass the estate until it has been transferred to them by conveyance, vesting order, or vesting declaration.

Trustees without power of sale.

A trustee without power of sale, although able to convey the estate, cannot make a good title without the concurrence of the beneficiaries: 2 Pres. 228; *Re Adams & Kensington Vestry*, 27 Ch. D. 394.

But if the trustee conveys by direction of the beneficiaries, both the legal estate and beneficial interest pass: 2 Pres. 234; unless the beneficiaries are tenants in tail or under disability: 3 Pres. 26.

Survivorship.

Where the estate is vested in trustees for sale as joint-tenants, the surviving trustee can sell: 2 Pres. 254; Sug. 664.

But a mere power created before 1882 seems not to survive, unless it is given to persons by a general description as "executors" or "trustees:" Sug. Pow. 128.

When a trust or power created after 1881 is given to trustees jointly, it is exercisable by the survivor, in the absence of any provision to the contrary: Conv. Act, 1881, s. 38.

Devolution at death.

Before 1882, a sole trustee (other than a "bare trustee" dying between the 7th of August, 1874, and the end of 1875,) could devise trust estates of inheritance: see p. 23; and the devisee could execute the trust for sale if assigns were mentioned in the trust: Dart, 683; see *Osborne to Rowlett*, 13 Ch. D. 774.

Up to the end of 1881, trust estates of inheritance, not disposed of by will, descended like beneficial interests to the heir (except in the case of a "bare trustee" dying after the 7th of August, 1874); and the heir could execute the trust for sale, if mentioned in the trust: *Re Morton & Hallett*, 15 Ch. D. 143.

Chap. IV. Sect. IV.

On the death of a "bare trustee" between the 7th of August, 1874, and the end of 1875, estates of which he was seised in fee vested in his personal representative: V. & P. Act, 1874, s. 5 (repealed, except as to anything duly done thereunder before the 1st of January, 1876, by 38 & 39 Vict. c. 87, s. 48): see *Christie* v. *Ovington*, 1 Ch. D. 279.

On the death of a "bare trustee" intestate between the 1st of January, 1876, and the end of 1881, estates of which he was seised in fee vested in his personal representative: 38 & 39 Vict. c. 87, s. 48 (repealed in cases of death after 1881 by the Conv. Act, 1881, s. 30): see *Morgan* v. *Swansea, &c. Authority*, 9 Ch. D. 582.

On the death of a sole trustee after 1881, estates of inheritance vested in him devolve to his personal representative, notwithstanding any devise, and such representative is the proper person to execute the trust: Conv. Act, 1881, s. 30; see *Re Pilling*, 26 Ch. D. 432.

But on the 16th of September, 1887, this section ceased to apply to copyholds vested in a tenant on the court rolls upon any trust: 50 & 51 Vict. c. 73, s. 45; see *Re Mills*, 37 Ch. D. 312.

Bankruptcy.

The estate of a trustee is not divested by his bankruptcy: see Lewin, 239; B. Act, 1869, s. 15; B. Act, 1883, s. 44.

BUILDING SOCIETIES.

Building Societies under Act of 1836.

Building Societies established under the Act of 6 & 7 Will. IV. c. 32 are not incorporated, but have power to take mortgages of real estate in the name of a trustee, which on his death or removal vest in the succeeding trustee, without any assignment: see ss. 1, 4; 10 Geo. IV. c. 56, ss. 13, 21.

Mortgage vacated by indorsed receipt.

A mortgage by a member to the trustees of such a society, may be vacated by a receipt indorsed by the trustees named in the mortgage or the survivor or

survivors of them or the trustees for the time being, for all moneys intended to be secured; the effect of such receipt being to vest the estate in the person entitled to the equity of redemption, without any reconveyance: 6 & 7 Will. IV. c. 32, s. 5; see *Hosking* v. *Smith*, 13 App. Cas. 582.

The receipt has to be in the form specified in the schedule to the certified rules of the society (s. 5).

Under Act of 1874.

On a building society certified under the Act of 1836 becoming incorporated under the Building Societies Act, 1874, all mortgages held in trust for the society vest in it without any conveyance: see 37 & 38 Vict. c. 42, s. 27; 40 & 41 Vict. c. 63, ss. 3, 4.

Re-conveyance.

A mortgage to a society under the Act of 1874 may be vacated by a reconveyance under its common seal: 37 & 38 Vict. c. 42, s. 42; see *Carlisle Banking Co.* v. *Thompson*, 28 Ch. D. 398.

Indorsed receipt.

An indorsed or annexed receipt under the society's common seal countersigned by the secretary or manager, in the form specified in the schedule to the Act of 1874, vacates a mortgage given to a society under the Act, and vests the estate in the person entitled to the equity of redemption, without any reconveyance: 37 & 38 Vict. c. 42, s. 42; see *Fourth City Mutual B. Soc.* v. *Williams*, 14 Ch. D. 140; *Sangster* v. *Cochrane*, 28 Ch. D. 298.

Any provisions in the rules of the society as to the use of its common seal have to be observed: see 37 & 38 Vict. c. 42, s. 16.

Stamps.

Prior to the 31st of July, 1868, mortgages to a building society established under the Act of 1836, and statutory receipts on redemption, were exempt from stamp duty by virtue of 6 & 7 Will. IV. c. 32, s. 4, and 10 Geo. IV. c. 56, s. 37: see *Thorn* v. *Croft*, L. R. 3 Eq. 193.

This exemption does not extend to mortgages made since the 31st of July, 1868, except mortgages not

exceeding £500 by members; but statutory receipts seem to be still exempt: see 31 & 32 Vict. c. 124, s. 11; 33 & 34 Vict. c. 97, s. 112.

Mortgages to a building society incorporated under the Act of 1874, are not exempt from duty; but statutory receipts on redemption seem to be exempt: see 37 & 38 Vict. c. 42, s. 41.

JOINT STOCK COMPANIES.

Joint Stock Companies.

A trading company, incorporated by registration under the Joint Stock Companies Act, 1856, or the Companies Act, 1862, has power to hold land: 19 & 20 Vict. c. 47, s. 13; 25 & 26 Vict. c. 89, s. 18; and has full power of disposition by deed under its common seal, unless limited by its memorandum or articles of association: *Re Patent File Co.*, L. R. 6 Ch. 83.

Debentures.

The issue of debentures as a floating security does not in general interfere with the company's power of disposition, so long as there is no receiver or winding-up order: see *Wheatley* v. *Silkstone, &c. Co.*, 29 Ch. D. 715.

But the form of the debentures may render it necessary to ascertain that no default has been made: see *Re Horne & Hellard*, 29 Ch. D. 736.

Winding up by Court.

Where an order has been made for winding up a company by the Court, the official liquidator has power with the sanction of the Court, to sell and convey the property of the company, using the company's seal: 19 & 20 Vict. c. 47, s. 90; 25 & 26 Vict. c. 89, s. 95. If several persons are appointed official liquidators, one of them cannot act alone unless so authorised by the order appointing them: see 19 & 20 Vict. c. 47, s. 88; 25 & 26 Vict. c. 89, s. 92; and see *Re Ebsworth & Tidy*, 42 Ch. D. 23.

Voluntary winding up.

Where a special resolution is passed for winding up a company voluntarily, its corporate state and powers con-

tinue until fully wound up, and the liquidators appointed by the resolution may, without the sanction of the Court, exercise all the powers of an official liquidator; but one of several liquidators cannot act alone, unless so authorized by the resolutions: 19 & 20 Vict. c. 47, ss. 102, 104; 25 & 26 Vict. c. 89, ss. 131, 133; see *Re Met. Bk. & Jones*, 2 Ch. D. 366.

Winding up under supervision.

Where an order has been made for winding up a company, subject to the supervision of the Court, the liquidators appointed by the company, together with those appointed by the Court (if any), have the same powers as the liquidators in a voluntary winding up, subject to any restrictions imposed by the Court: 21 & 22 Vict. c. 60, ss. 3, 4; 25 & 26 Vict. c. 89, ss. 150, 151.

RAILWAY COMPANIES.

Railway Companies.

A railway company which acquires land under statutory powers has no power of alienation except such as is conferred by statute: *Mulliner* v. *Midland R. Co.*, 11 Ch. D. 611.

But where the company's special Act, passed after the 8th of May, 1845, authorises the purchase or taking of land for its undertaking, the Lands Clauses Consolidation Act, 1845, applies (unless expressly excluded): see 8 & 9 Vict. c. 18, s. 1; and confers the following power of disposition:—

Land acquired for extraordinary purposes.

(1.) The company is empowered to sell land acquired for extraordinary purposes (s. 13); and the provisions as to superfluous land do not apply to such a sale: *City of Glasgow R. Co.* v. *Caledonian R. Co.*, L. R. 2 H. L. Sc. 160.

Superfluous land.

(2.) The company is empowered to sell its superfluous land (s. 127).

Land under a railway arch or over a tunnel is not

superfluous, and therefore cannot be sold: *Mulliner* v. *Midland R. Co.*, 11 Ch. D. 611; *Re Met. Distr. R. Co.* v. *Cosh*, 13 Ch. D. 607; see *Rosenberg* v. *Cook*, 8 Q. B. D. 162.

The sale must be within the period prescribed by the company's special Act, or (if none is prescribed) within ten years after the time fixed for the completion of the works: otherwise the land vests in the adjoining owners (s. 127).

To make a good title, all rights of pre-emption of the original and adjoining owners under s. 128, must be shown to have ceased: see s. 129; Dart, 857.

The company must sell absolutely (s. 127): see *Re Thackwray & Young*, 40 Ch. D. 34. If an option of repurchase is reserved, the sale is *ultra vires* and void: *S. W. R. Co.* v. *Gomm*, 20 Ch. D. 562; but conditions restricting the user of the land do not invalidate the sale: *Re Higgins & Hitchman*, 21 Ch. D. 95.

Statutory restrictions as to user, in abeyance during the company's ownership, revive on a sale: *Bird* v. *Eggleton*, 29 Ch. D. 1012.

The conveyance has to be under the company's common seal, and a receipt under the common seal or signed by two directors is sufficient (s. 131).

CHAPTER V.

EVIDENCE OF TITLE.

NOTHING in the abstract must be taken upon trust; but all the abstracted deeds and documents must be verified, and all facts material to the title, such as births, deaths, and marriages, failure of issue, survivorship, intestacy, heirship, and performance of conditions must be proved, except so far as the right to evidence is limited by the contract: see Dart, 372.

In considering what evidence is necessary to support the title, two objects must be kept in view:—

(1.) That a safe holding title be obtained;

(2.) That the evidence be such as would satisfy a purchaser on a re-sale: see 3 Pres. 19; Sug. 417.

The vendor is bound to produce such evidence as is in his possession: see Sug. 416; but the cost of obtaining any evidence which is not in his possession has to be borne by the purchaser: Conv. Act, 1881, s. 3 (6).

The evidence usually required to be furnished in verification of an abstract is as follows:—

Acknowledgment, in the case of deeds executed before 1883, is proved by an office copy of the certificate of acknowledgment: 3 & 4 Will. IV. c. 74, s. 88; Conv. Act, 1882, s. 7. An indorsed memorandum of acknowledgment is not sufficient: *Jolly* v. *Handcock*, 7 Ex. 820.

In the case of deeds executed after 1882, an indorsed

memorandum of acknowledgment signed by one commissioner is conclusive evidence: Conv. Act, 1882, s. 7.

Act of Parliament (Private), is proved by a Queen's printer's copy: Sug. 414; Dart, 351.

Administrator, appointment of, is proved by the letters of administration: Cov. 209.

Admittance to copyholds, is proved by the copy of court roll, signed by the steward: Cov. 157. It is not usual to require the steward's signature to be verified: Sug. 417; Dart, 351.

Age, is sufficiently proved by a certificate of birth, or baptism: see Cov. 281; and see **Birth.**

Annuity (Life), cessation of, is proved by a receipt for the last payment, signed by the annuitant's personal representative, whose appointment is verified by the production of the probate or letters of administration: see Sug. 415; *Mitchell* v. *Holmes,* L. R. 8 Ex. 119.

Appointment, default of, seems to be sufficiently proved by a written statement of the solicitor of the person empowered to appoint, that he has reason to believe that no appointment has been made: see Sug. 416; *Re Cull,* L. R. 20 Eq. 561.

Attorney (Power of), non-revocation of, is sufficiently proved by evidence of the principal having survived the execution of the power: Cov. 37; Sug. 417; unless the power was voluntary, in which case inquiry should also be made whether any deed of revocation has been executed, and search should be made against the principal in bankruptcy: see Dart, 352; *Ex parte Snowball,* L. R. 7 Ch. 534; and see *ante,* p. 18.

Award under Inclosure Act, is proved by an office copy or extract: Sug. 414; Dart, 351; 8 & 9 Vict. c. 118, s. 2; and see *ante*, p. 29.

Bankruptcy, adjudication, is proved by an office copy of the order, or by a copy of the London Gazette in which it is published: B. Act, 1849, ss. 236, 240; B. Act, 1861, s. 203; B. Act, 1869, ss. 10, 107; B. Act, 1883, ss. 132, 134.

Official assignee, appointment of, under the Act of 1849 or 1861, is proved by an office copy of the order: B. Act, 1849, ss. 102, 236; B. Act, 1861, s. 203.

Creditors' assignee, appointment of, under the Act of 1849 or 1861 is proved by an office copy of the certificate of appointment: B. Act, 1849, s. 236; B. Act, 1861, ss. 123, 203.

Trustee, appointment of, under the B. Act, 1869, is proved by an office copy of the certificate of appointment (ss. 18, 107).

Trustee, appointment of, under the B. Act, 1883, is proved by the certificate of the Board of Trade (ss. 138, 140).

Certificate of conformity, under the B. Act, 1849, is proved by an office copy (s. 236).

Discharge of bankrupt, is proved by an office copy of the order of discharge: B. Act, 1861, ss. 161, 203; B. Act, 1869, ss. 49, 107; B. Act, 1883, ss. 30, 134.

Close of bankruptcy under the B. Act, 1869, is proved by an office copy of the order, or by a copy of the London Gazette in which it is published (ss. 47, 107).

Birth, is proved by a certificate of birth under the seal of the General Register Office: 6 & 7 Will. IV. c. 86, s. 38; or by a certificate of baptism: Cov. 300; Dart, 392. Evidence of identity is not usually required: Cov. 278.

Building Society, establishment of, under the Act of 1836, is proved by a copy of the rules certified by the

Chap. V.

Registrar of Friendly Societies: 9 & 10 Vict. c. 27, s. 12; Pratt, 20.

Trustee, appointment or removal of, is proved by minutes of the resolution of the society: see Pratt, 15.

Incorporation of, under the Act of 1874, is proved by the certificate of incorporation: 37 & 38 Vict. c. 42, ss. 9, 20.

Rules of an incorporated society, are proved by a printed copy, certified by the secretary (s. 20).

Company (Joint Stock), incorporation of, under the Act of 1856 or 1862, is proved by the certificate of incorporation: 19 & 20 Vict. c. 47, s. 13; 25 & 26 Vict. c. 89, s. 18.

Power of disposition, is proved by a copy of the memorandum and articles of association: see p. 76.

Winding up (compulsory), and appointment of official liquidator, are proved by office copies of the orders of Court: see 19 & 20 Vict. c. 47, ss. 73, 88; 25 & 26 Vict. c. 89, ss. 88, 92.

Winding up (voluntary), and appointment of liquidators, are proved by minutes of the special resolution of a general meeting: see 19 & 20 Vict. c. 47, ss. 40, 102, 104; 25 & 26 Vict. c. 89, ss. 67, 129, 133; the regularity of the proceedings being proved by a copy of the notice given, and a copy of the articles: see *Re Sheffield, &c. Co.*, W. N. 1887, 218.

Winding up under supervision, and appointment of liquidators, are proved by minutes of the special resolution for voluntary winding up and appointment of liquidators, and an office copy of the supervision order: see 20 & 21 Vict. c. 14, s. 19; 21 & 22 Vict. c. 60, s. 3; 25 & 26 Vict. c. 89, ss. 147, 150.

Composition, under the Bankruptcy Act, 1869, is proved by office copies of the petition and registered resolution (ss. 107, 127):

Under the Bankruptcy Act, 1883, by an office copy of the instrument containing the terms of the composition approved by the Court (ss. 18, 134).

Consideration, payment of, is proved by a recital of payment or an indorsed receipt, or in the case of deeds executed after 1881, by a receipt in the body of the deed: see p. 19.

Copyholds, see **Admittance, Surrender.**

Court of Chancery, or **Supreme Court,** orders and proceedings of, are proved by the originals or office copies: see Dart, 359.

Sale by approbation of the judge is proved by an office copy of the certificate of the result of the sale: see Sug. 116; Seton, 1397.

Covenants, performance of, in the case of leaseholds, is sufficiently proved by production of the receipt for the last payment due for rent: Conv. Act, 1881, s. 3 (4), (5); see *Re Higgins & Percival*, W. N. 1888, 172; except where the lease is at a peppercorn rent: *Re Moody & Yates*, 28 Ch. D. 661; 30 Ch. D. 344.

Death is proved by a certificate of death under the seal of the General Register Office: 6 & 7 Will. IV., c. 86, s. 38; or by a certificate of burial, or by probate of the will of the deceased, or letters of administration to his estate: Cov. 287; Sug. 415, 418; Dart, 392. Evidence of identity is not usually required, unless the name is a common one: Cov. 304.

Deeds are proved by production of the originals: Dart, 353; it is not usual to require the execution of the parties to be verified: Cov. 13; Sug. 418.

Disclaimer is generally proved by deed of disclaimer, but an informal note in writing is sufficient: Cov. 205; see *Re Birchall*, 40 Ch. D. 436; and see *ante*, p. 24.

Chap. V.

Enrolment in Chancery of a deed, is sufficiently proved by the indorsed certificate of enrolment: 12 & 13 Vict. c. 109, s. 18.

Executor, appointment of, is proved by the probate of the will or official extract: Sug. 414; Dart, 363; see *Tarn* v. *Com. Bk. of Sydney*, 12 Q. B. D. 294.

Assent of, is generally proved by writing signed by him, or by his concurrence in the legatee's assignment: see p. 47.

Heirship is proved by evidence of the survivorship of the heir, his relationship, and failure of nearer heirs: see p. 40. Evidence of the ancestor's intestacy is also necessary: Dart, 376.

A statutory declaration of a member of the family, accompanied by certificates of marriage, birth, and death, may generally be accepted in support of the pedigree: see Cov. 279; Sug. 420.

In the case of noblemen, the succession to the title may generally be regarded as sufficient evidence of the pedigree, as appearing in Debrett's Peerage: see Cov. 311.

Identity of parcels, if not shown by a comparison of the plans and descriptions in the deeds with the ordnance map or tithe map, may be proved by statutory declarations of old inhabitants: see Sug. 417.

Change of name of a street or of the number of a house in the metropolitan area, by order of the Metropolitan Board of Works, may be proved by a certified copy of the order: see Woolrych, 216.

If the identity depends on occupation or seisin, it may be proved by production of leases or tenants' agreements, or by a comparison of the present and past assessments to poor-rate and land-tax: 3 Pres. 33; Cov. 31.

Inclosure, see **Award.**

Insolvency, petition, vesting order and order of adjudication under the Act of 1838, are proved by office copies: 1 & 2 Vict. c. 110, s. 105.

Petition and final order under the Act of 1842, are proved by office copies: 12 & 13 Vict. c. 106, s. 239.

Assignees, appointment of, under the Act of 1838, is proved by an office copy of the appointment: 1 & 2 Vict. c. 110, s. 46.

Assignees, appointment of, under the Act of 1842, is proved by an office copy of the certificate of appointment: 5 & 6 Vict. c. 116, s. 11.

Discharge of debtor under the Act of 1838, is proved by an office copy of the order of adjudication or discharge: 1 & 2 Vict. c. 110, ss. 75, 105.

Intestacy seems to be sufficiently proved by the letters of administration to the intestate's estate; but search is usually made to see that no will has been proved: Cov. 277; Dart, 380.

Jointure, cessation of, is proved in the same way as the cessation of an annuity: see **Annuity.**

Land-Tax, redemption of, is proved by the certificate of the Commissioners, or an official extract from the register: Sug. 323; Cov. 270; see Dart, 398.

Lease, under which the property is held, is proved by production of the original: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213.

Leases to which the property is subject are sufficiently proved by production of the counterparts: see *Magdalen Hosp.* v. *Knotts*, 8 Ch. D. 709.

Legacy, discharge of, is proved by a release or receipt signed by the legatee: see Cov. 266; and see *post*, Chap. VI.

Liquidation, under the Bankruptcy Act, 1869, is proved by office copies of the petition and registered resolution: B. Act, 1869, ss. 107, 127.

Trustee, appointment of, is proved by an office copy of the Registrar's certificate of appointment: ss. 107, 125 (6).

Close of liquidation is proved by an office copy of the resolution of the creditors: ss. 107, 125 (9).

Discharge of debtor is proved by an office copy of the certificate of discharge signed by the Registrar: ss. 107, 125 (10).

Loss of any instrument seems sufficiently proved by a statutory declaration of diligent search having been made for it without success: see *Parr* v. *Lovegrove*, 4 Drew. 181.

Lunacy, orders in, are proved by office copies: Dart, 361.

Marriage is proved by a certificate of marriage under the seal of the General Register Office: 6 & 7 Will. IV. c. 86, s. 38; or by a certified extract from the parish register: Cov. 283; Dart, 392. Evidence of identity of the parties is not usually required: Cov. 304.

Orders of Court, see **Court.**

Payment into Court, is proved by an office copy of the Paymaster's certificate: Seton, 82.

Portions, discharge of, is proved by a release accompanied by evidence that the releasors are the portionists: Cov. 267.

Power, see **Appointment, Attorney.**

Railway Company, incorporation of, is proved by a Queen's printer's copy of the company's special Act of Parliament: see Sug. 414.

Recited Facts and matters in deeds, instruments, Acts of Parliament, or statutory declarations, 20 years old at the date of the contract, are sufficiently evidenced by the recitals: V. & P. Act, 1874, s. 2; see p. 12.

Registration of an instrument in Middlesex or Yorkshire, is proved by the indorsed certificate of registration: Sug. 415; York Reg. Act, 1884, s. 9.

Rent, payment of, is proved by production of the last receipt: see Conv. Act, 1881, s. 3 (4), (5).

Succession duty, payment of, is proved by the receipt of the Inland Revenue Office or certificate of payment: 16 & 17 Vict. c. 51, s. 52; see *Howe* v. *Lichfield*, L. R. 2 Ch. 155; and see *post*, p. 95.

Surrender of copyholds is proved by a copy of the court roll, signed by the steward: Cov. 156. It is not usual to require the steward's signature to be verified: Sug. 417.

Survivorship of one of several persons, see **Death.**

Wills are verified by production of the probate or official copy: Sug. 414; Dart, 862. But if neither be in the vendor's possession, the register at Somerset House can be inspected: see p. 24.

Winding up, see **Company.**

CHAPTER VI.

TITLE TO BE SHOWN.

Chap. VI.

Title to be shown.

It must be considered whether the title shown by the abstract enables the vendor to perform his contract; and any deficiency in this respect should be pointed out in the opinion and requisitions made accordingly: see 3 Pres. 217.

An agreement to make a good title is always implied in the absence of special conditions: Sug. 16; unless at the time of the contract the purchaser knew that a good title could not be made: see *Ellis* v. *Rogers*, 29 Ch. D. 661.

The expense of supplying a defect in the title has to be borne by the vendor, in the absence of a stipulation to the contrary: see *Re Moody & Yates*, 28 Ch. D. 661; 30 Ch. D. 344.

Special conditions.

Any defect in title which is covered by the conditions of sale must be disregarded, as forming no objection: 3 Pres. 221; but a condition will not have this effect unless it clearly states the nature of the defect: see *St. Saviours' Trustees & Oyler*, 31 Ch. D. 412.

A condition requiring the purchaser to assume what the vendor knows to be false is not binding: *Re Banister*, 12 Ch. D. 131; but see *Best* v. *Hamand*, 12 Ch. D. 1.

A condition requiring objections to be made within a certain time seems not to preclude the purchaser from subsequently raising an objection which goes to the root of the title: *Re Tanqueray-Willaume & Landau*, 20 Ch. D. 465.

A title must be shown to every part of the estate: see *Re Arnold*, 14 Ch. D. 270; *Brewer* v. *Brown*, 28 Ch. D. 309; but if the title be substantially good, trivial defects in the evidence may be disregarded: Cov. 170.

Where there have been frequent changes of ownership by sale, and the possession has been uninterrupted, the presumption is in favour of the title, although not shown for the full period: 1 Pres. 261. But where the estate has remained in the same family for a long time, more than ordinary caution is required: 1 Pres. 262.

Signs of good title.

The following circumstances may be regarded as the signs of a good title (see 3 Pres. 230):—

(1.) Identity of the property purchased with that to which title is shown.

(2.) Tenure of the property the same as that contracted for.

(3.) Title shown to the legal estate and beneficial ownership.

(4.) Freedom from equities and restrictions as to user.

(5.) Determination of prior estates, such as:—

i. Estates tail.
ii. Life estates.
iii. Dower.
iv. Curtesy.

(6.) No incumbrances, such as:—

i. Mortgages.
ii. Annuities.
iii. Rents.
iv. Debts.
v. Legacies.
vi. Portions.
vii. Terms.
viii. Tenancies.
ix. Succession duty.
x. Paving and sewering expenses.

Chap. VI.

xi. Judgments and writs of execution, crown-debts and executions, annuity deeds and *lis pendens*.
xii. Writs and orders affecting land, deeds of arrangement and land charges.

(7.) Power of disposition unaffected by:—
i. Bankruptcy, liquidation or composition.
ii. Instruments on local registry or court rolls.
iii. Settlement.
iv. Adverse claims.

(8.) Possession of title deeds.

Identity.

The identity of the property purchased with that to which title is shown, is as much a matter of title as devolution is: *Brown* v. *Wales*, L. R. 15 Eq. 142; and if upon the face of the abstract the identity is not clear, evidence on the point is necessary: 3 Pres. 33. The ordnance map often clears up doubts in this respect, and should generally be resorted to before procuring other evidence.

Tenure.

If the tenure of the property does not agree with that stated in the contract, it is an objection to title: Sug. 302; Dart, 1199.

Thus, leaseholds or copyholds do not satisfy a contract for the sale of freeholds: Sug. 302; *Hart* v. *Swaine*, 7 Ch. D. 42.

If the contract is silent as to the vendor's interest, the fee simple is deemed to be sold: Sug. 298; but see Dart, 129.

In the case of leasehold property, merely described as held under a lease, a good title is not made unless the lease is an original lease: Sug. 300; *Re Beyfus & Master*, 39 Ch. D. 110.

The term and rent mentioned in the lease must agree with the statements in the contract, as a shorter term or higher rent would diminish the value of the property: 2 Pres. 9; *Jones* v. *Rimmer*, 14 Ch. D. 588.

Legal estate.

In the absence of special conditions, the vendor must show a title to the legal estate as well as to the beneficial ownership free from incumbrances, either in himself or in some person bound to convey at his request: 3 Pres. 401; Sug. 372. But the devolution of the legal estate need not be traced if power to get it in under the Trustee Act be shown: *Camberwell, &c. Soc.* v. *Holloway*, 13 Ch. D. 754.

Notice.

The legal estate is of great importance, as it protects the purchaser from all equities except those of which he has notice before completion: 3 Pres. 256; see *Whiting* to *Loomes*, 14 Ch. D. 822. But it must be remembered that the purchaser has notice of every deed stated or referred to in the abstract; and notice of a deed is constructive notice of all its contents, except where no access can be had to it: 3 Pres. 229; Sug. 775; *Patman* v. *Harland*, 17 Ch. D. 356; and see Conv. Act, 1882, s. 3.

Where the title depends on the vendor having bought without notice of an incumbrance, it will not be forced on the purchaser, as it might expose him to a lawsuit: Sug. 753; *Notts, &c. Co.* v. *Butler*, 16 Q. B. D. 778.

Beneficial ownership.

An equitable title, without the legal estate, is not considered marketable, as it is exposed to the risk of being defeated by dormant incumbrancers: 2 Pres. 229; and if the legal estate cannot be got in, the title will not be forced on the purchaser: Sug. 398; *Re Mercer & Moore*, 14 Ch. D. 287. On the other hand, if the vendor cannot pass the beneficial ownership, the fact that he has the legal estate is valueless: 2 Pres. 229; see *Lee* v. *Soames*, 36 W. R. 884.

Accordingly, all persons having any estate or interest (whether legal or equitable) in the property, should join in the conveyance, unless the whole legal and beneficial ownership can be passed without them by the exercise of an overriding power.

Chap. VI.

Contingent title.

When the title depends on a contingency, it must be shown to have happened: 3 Pres. 285; see Sug. 402.

So, on a sale by a mortgagee under his power, he must give evidence of the facts entitling him to exercise it, unless the purchaser is protected by the terms of the power: see *Re Ebsworth & Tidy*, 42 Ch. D. 31; and see *ante*, p. 65.

Defeasible estate.

If the vendor's estate is defeasible by a stranger, the title is bad, unless a release or confirmation can be procured from him: 3 Pres. 284.

Thus, a power of appointment, option of purchase, or right of re-entry, vested in a stranger, must be released, unless void for remoteness: 3 Pres. 286; *Dunn* v. *Flood*, 25 Ch. D. 629.

So, if the vendor holds under a voluntary grant, the death of the grantor should be proved, or his concurrence in the conveyance procured: see Cov. 59.

In the case of leaseholds, the title will be bad if the lease is determinable at the option of the lessor: *Weston* v. *Savage*, 10 Ch. D. 736; or if it contains a proviso for re-entry for breach of covenants, and any covenant has been broken and the breach not waived: see Sug. 370; or if other property is included in the lease with a general proviso for re-entry for breach of covenants: Sug. 382; *Cresswell* v. *Davidson*, W. N. 1887, 87; or if the property is subject to an underlease which does not contain similar covenants to those in the head lease: *Darlington* v. *Hamilton*, Kay, 550.

The title to an agreement for a lease is bad if the agreement is voidable: *Brewer* v. *Broadwood*, 22 Ch. D. 105.

Restriction as to user.

If the user of the property is restricted by covenant, it is an objection to title: *Re Higgins & Hitchman*, 21 Ch. D. 95; see *Andrew* v. *Aitken*, 22 Ch. D. 218; *Re Davis & Cavey*, 40 Ch. D. 601.

In the case of leaseholds, onerous covenants of an unusual kind are an objection to title: *Reeve* v. *Berridge*, 20 Q. B. D. 523.

So, easements over the property may render the title bad: Sug. 312; *Heywood* v. *Mallalieu*, 25 Ch. D. 357.

Estate tail.

Where the title depends on an estate tail having determined, evidence of the death and failure of issue of the tenant in tail must be given, and search should be made against him for disentailing deeds: see 3 Pres. 279.

Life estates.

Evidence of the death of life tenants should be given, or if any are still living, they should join in the conveyance: see 3 Pres. 279.

If any right to dower or curtesy exists, a release of such right will be required to complete the title.

Dower.

Inquiry should be made as to the existence of any right to dower in the following cases:—

(1.) Where any legal owner in fee or in tail has or possibly may have been married on or before the 1st of January, 1834;

(2.) Where any owner in fee or in tail has died intestate, without having barred dower: see p. 42.

Curtesy.

Inquiry should be made as to the existence of any right to curtesy, where any owner in fee or in tail appears to have been a married woman: see p. 62.

In the case of copyholds, the custom as to freebench or curtesy should be ascertained from the steward of the manor, and inquiry made accordingly: see pp. 43, 62.

Mortgages.

Any existing mortgage or charge on the property should be reconveyed or released: 3 Pres. 288; the purchaser being entitled to have incumbrances discharged out of the purchase money: see Dart, 666; *Re Jackson & Oakshott*, 14 Ch. D. 851; but see *Re G. N. R. Co. & Sanderson*, 25 Ch. D. 788.

Inquiry should be made whether any power of charging has been exercised: Sug. 416.

Chap. VI.

Annuities. Annuities charged on the property should be shown to have ceased, or if subsisting should be released: 3 Pres. 357.

Rents. Rents payable out of the property should be released: 3 Pres. 357; Sug. 313; see *Re G. N. R. Co. & Sanderson*, 25 Ch. D. 788.

If leaseholds are sold subject to an apportioned part of a larger rent, the vendor is bound to show that the apportionment has been duly effected: Sug. 383.

Debts. Debts charged on real estate by deed or will are regarded as incumbrances when the creditors are specified, and in such cases should be released; but the devisee of an estate subject to a general charge of debts seems able to make a title without the creditors' concurrence: see 3 Pres. 359; *Colyer* v. *Finch*, 5 H. L. C. 905; Dart, 699.

Legacies. Legacies charged on the estate are incumbrances and should be released, unless there is also a general charge of debts, in which case a title can be made without the legatees' concurrence: 3 Pres. 360.

Portions. Portions charged on the estate are incumbrances and should be released: 3 Pres. 363.

Where the portionists are infants, an order discharging the incumbrances under sect. 5 of the Conv. Act, 1881, appears to be necessary: see Sug. 659.

Terms. Terms of years should be shown to have expired or been determined by surrender, or by becoming satisfied and attendant upon the inheritance under 8 & 9 Vict. c. 112: see Dart, 368; *Lawton* v. *Ford*, L. R. 2 Eq. 97.

Leases. Leases are incumbrances if the vendor has contracted to give vacant possession: 3 Pres. 400; Sug. 304; see *Caballero* v. *Henty*, L. R. 9 Ch. 447.

In the case of ground rents or property sold subject to leases, a longer term or lower rent than that contracted for would diminish the value of the property, and would therefore entitle the purchaser to compensation.

Tenancies.

Inquiry should be made of any occupying tenant as to the nature of his interest, as the purchaser is deemed to have constructive notice of his rights: Sug. 518; Dart, 518; see *Holmes* v. *Powell*, 8 D. M. & G. 572.

Succession duty.

Succession duty is payable in respect of every succession to a beneficial interest in possession in the property on the death of any person since the 19th of May, 1853, and is a first charge on the interest of the successor: 16 & 17 Vict. c. 51, ss. 2, 5, 10, 21, 42, 54; 51 Vict. c. 8, ss. 21, 22; 52 Vict. c. 7, s. 6.

Accordingly, where succession duty has attached, evidence of its payment should be given, unless barred by lapse of time: see 52 Vict. c. 7, s. 12.

Exceptions:—

(1.) No duty is payable on any succession before June, 1889, of less value than £20, or where the whole successions derived from the same predecessor are of less value than £100: 16 & 17 Vict. c. 51, s. 18; 52 Vict. c. 7, s. 10.

(2.) Nor where the successor is the husband or wife of the predecessor: 16 & 17 Vict. c. 51, s. 18; 55 Geo. III. c. 184, Sched. pt. III.

(3.) Nor where the property is included in the affidavit on which the fixed probate duty of 30*s*. has been paid in conformity with the Customs and Inland Revenue Act, 1881: 44 Vict. c. 12, s. 36.

(4.) The one per cent. duty is not payable where the property is included in the affidavit or account on which duty has been paid in conformity with the Customs and Inland Revenue Act, 1881: 44 Vict. c. 12, s. 41.

(5.) The exercise of a power of sale over settled land comprised in a succession frees the land from duty, by reason of the proceeds being charged: 16 & 17 Vict. c. 51, s. 42; *Dugdale* v. *Meadows*, L. R. 6 Ch. 501.

(6.) A sale by the Court under the Settled Estates Act, 1877, has the same effect: *Re Warner*, 17 Ch. D. 711.

Chap. VI.

(7.) No succession is created by a conveyance by way of sale: *Fryer* v. *Morland*, 3 Ch. D. 675.

Land-tax and tithes.

Land-tax and tithes are not an objection to title, nor is the vendor bound to discharge them: Sug. 322; or to procure an apportionment: *Re Ebsworth & Tidy*, 42 Ch. D. 23.

Paving and sewering expenses.

Expenses of paving and sewering, apportioned by a Vestry or District Board under the Metropolis Local Management Acts, or incurred by a Local Authority under the Public Health Act, 1875, are a charge on the property: *Plumstead Bd. of Wks.* v. *Ingoldby*, L. R. 8 Ex. 63, 174; *Birmingham Corp.* v. *Baker*, 17 Ch. D. 782.

Inquiry as to the existence of any charges of this kind should accordingly be made of the Vestry or Local Authority: see Dart, 524.

If the work is complete at the date of the contract, the charge is payable by the vendor: *Re Bettesworth & Richer*, 37 Ch. D. 535.

Judgments, &c.

Judgments entered up against an owner of land are a charge (1 & 2 Vict. c. 110, s. 13), subject to the following qualifications:—

(1.) A judgment entered up before the 23rd of July, 1860, does not affect a purchaser unless registered and re-registered in the Common Pleas Office (now the Central Office) within 5 years before completion: 1 & 2 Vict. c. 110, s. 19; 2 & 3 Vict c. 11, s. 4; 18 & 19 Vict. c. 15, s. 6.

(2.) A judgment entered up between the 23rd of July, 1860, and the 29th of July, 1864, does not affect a purchaser unless registered and re-registered as aforesaid, and unless a writ of execution has been registered and executed within three months after its registration: 23 & 24 Vict. c. 38, s. 1.

(3.) A judgment entered up since the 29th of July, 1864, does not affect land until delivered in execution:

27 & 28 Vict. c. 112, s. 1; see Dart, 557; *Re Pope*, 17 Q. B. D. 743.

(4.) Writs and orders affecting land are void as against a purchaser, unless registered in pursuance of the Land Charges, &c., Act, 1888, except in the following cases:—

(i.) Where the writ or order was on the 1st of January, 1889, registered under the Act 27 & 28 Vict. c. 112;

(ii.) Where the proceeding in which the writ or order was issued or made is registered as a *lis pendens*: 51 & 52 Vict. c. 51, s. 6.

Crown-debts.

Crown-debts are a charge on the crown-debtor's land; but a purchaser is not affected by crown-debts incurred since the 4th of June, 1839, unless registered and re-registered in the Common Pleas Office (now the Central Office) within 5 years before completion: 2 & 3 Vict. c. 11, s. 8; 22 & 23 Vict. c. 35, s. 22; nor by crown-debts incurred since the 1st of November, 1865, unless execution has been issued and registered before completion: 28 & 29 Vict. c. 104, s. 48; see Dart, 563.

Annuities.

Life annuities granted since the 26th of April, 1855, otherwise than by marriage settlement or will, do not affect a purchaser without notice, unless registered in the Common Pleas Office (now the Central Office): 18 & 19 Vict. c. 15, ss. 12, 14; see Dart, 568; *Greaves* v. *Tofield*, 14 Ch. D. 563.

Lis pendens

A *lis pendens* does not bind a purchaser without express notice, unless registered and re-registered in the Common Pleas Office (now the Central Office) within 5 years before completion: 2 & 3 Vict. c. 11, s. 7; see Dart, 565.

Deeds of arrangement and land charges.

Deeds of arrangement and land charges required to be registered by the Land Charges, &c. Act, 1888, are avoided

Chap. VI.

as against a purchaser unless so registered: 51 & 52 Vict. c. 51, ss. 9, 12.

Bankruptcy, &c.

Bankruptcy, liquidation, or composition proceedings against an owner of land may deprive him of all power of disposition: see *ante*, pp. 50—57.

Searches.

Searches should accordingly be made against the vendor:—

(1.) In the Central Office for judgments and writs of execution, crown-debts and executions, annuities, and *lis pendens;* unless he is a trustee or mortgagee, in which case a search for *lis pendens* is sufficient; see Dart, 565: an official search can be obtained under the Conv. Act, 1882, s. 2.

(2.) At the Land Registry Office, for writs and orders affecting land, deeds of arrangement, and land charges: an official search can be obtained; see 51 & 52 Vict. c. 51, s. 17.

(3.) At the Bankruptcy Court, for bankruptcy, liquidation, and composition proceedings: see Dart, 567.

If the vendor did not purchase the property, similar searches should be made against his predecessors in title, back to and including the last purchaser: see Dart, 560.

In the case of settled land, search should be made against existing and previous life-tenants at the Land Registry Office for land charges: see 51 & 52 Vict. c. 51, s. 10.

In the case of agricultural land, inquiry should be made whether there is any charge for drainage or improvements created before 1889: see 51 & 52 Vict. c. 51, s. 13.

Local registry.

In the case of freeholds and leaseholds situate in Middlesex or Yorkshire, a search in the local registry should be made, to see that no registered instruments are omitted from the abstract: Dart, 566.

Deeds and documents disclosed by the register should be inquired for and examined: *Kettlewell* v. *Watson*, 26 Ch. D. 501.

Court rolls.

If the property is copyhold, a similar search in the court rolls should be made: Dart, 566. But the local registry need not be searched, as copyholds are excepted from the Registration Acts: Sug. 731; York. Reg. Act, 1884, s. 28. Enfranchisement deeds, however, require registration: *Reg.* v. *Middlesex Registrar*, 21 Q. B. D. 555.

Settlement.

It is prudent to inquire whether the vendor has executed any settlement: Dart, 373; see *Lloyd's Bank. Co.* v. *Jones*, 29 Ch. D. 221; but the vendor is not bound to answer: *Re Ford & Hill*, 10 Ch. D. 365.

A voluntary settlement cannot be disregarded, as it may have been confirmed by a subsequent consideration: Sug. 720; Dart, 1019; *Clarke* v. *Willott*, L. R. 7 Ex. 313.

Adverse claim.

An adverse claim to the estate is not necessarily a fatal objection, but inquiry should be made of the claimant as to his rights: Sug. 7, 395.

Production.

Production of the abstracted deeds and documents is necessary, not only to verify the abstract, but also to ascertain that they have not been deposited by way of mortgage: see Cov. 5; Dart, 479; and see *Sangster* v. *Cochrane*, 28 Ch. D. 298.

The want of a legal covenant for production, however, seems not to be an objection to title: see Sug. 453; V. & P. Act, 1874, s. 2.

In the case of copyholds, the stamped copies of the court roll are the proper muniments of title, and should therefore be produced: Cov. 158; Sug. 448.

The vendor is bound to produce all the documents of title: Sug. 429; Dart, 470; but the expense of producing such as are not in his possession has to be borne by the purchaser: Conv. Act, 1881, s. 3 (6); *Re Ebsworth & Tidy*, 42 Ch. D. 23; *Re Willett & Argenti*, W. N., 1889, 66.

Chap. VI.

Lost deed.

If any deed is lost, it seems to be no objection, unless its absence throws a reasonable doubt on the title; but evidence of its contents and execution, and of the loss must be given: Sug. 437; Dart, 345, 353; see *ante*, p. 86.

No deeds.

The want of title deeds is not necessarily a fatal objection to the title: 1 Pres. 23; but it renders great caution necessary; and evidence of long uninterrupted possession, enjoyment, and dealing with the property should be given to show that there is an absolute title in fee, and the absence of deeds should be accounted for: Sug. 438.

Statutes of Limitation.

A defect in title may be cured by possession under the Statutes of Limitation, 3 & 4 Will. IV. c. 27, and 37 & 38 Vict. c. 57; and a title depending on the Statutes may be forced on the purchaser: Sug. 389; *Games* v. *Bonnor*, 33 W. R. 64. But the 12 years bar only applies against a person entitled in possession, and also *sui juris* when time began to run; so that evidence on this point is necessary: see Dart, 463.

Where the estate is in settlement, time does not begin to run against a remainderman until his estate falls into possession; so that a title may be defective even after 30 years' possession: see Sug. 483; *Mills* v. *Capel*, L. R. 20 Eq. 692; and see *Pedder* v. *Hunt*, 18 Q. B. D. 565.

Subsequent acknowledgment does not restore a title which has once been barred: *Sanders* v. *Sanders*, 19 Ch. D. 373.

Although the Statutes seem not to run against an express trustee where the beneficiary is in possession, they run against a constructive trustee, such as a mortgagee who has been paid off without reconveying, so as to get in the legal estate: *Sands* to *Thompson*, 22 Ch. D. 614.

A title may be acquired under the Statutes against a

corporation, a railway company, or a charity, as well as against a private person: see *Brighton Mayor* v. *Brighton Guardians*, 5 C. P. D. 368; *Bobbett* v. *S. E. R. Co.* 9 Q. B. D. 424; *Magdalen Hospital* v. *Knotts*, 4 App. Cas. 324.

Opinion on title.

The points to be dealt with in the opinion on title may be summed up as follows:—

(1.) Any defects in title or evidence of title.

(2.) Any incumbrances affecting the property.

(3.) Any doubts arising as to the construction or legal effect of any instrument.

(4.) The means by which such defects can be supplied and such doubts removed.

(5.) The risk caused by any defect which cannot be remedied, leaving it to the purchaser to decide whether he will waive the objection.

(6.) The necessary parties to the conveyance.

(7.) The requisitions to be made for completing and verifying the abstract and perfecting the title.

(8.) The searches and inquiries to be made: see 1 Pres. 3, 261.

Vendor and purchaser summons.

If any question arises in respect of a requisition or objection to title or claim for compensation, the decision of a Judge can be obtained by a summons under the V. & P. Act, 1874, s. 9, provided neither the existence nor the validity of the contract is disputed: see Seton, 1318; and see *Re Jackson & Woodburn*, 37 Ch. D. 44.

If a good title is not shown, the purchaser may in this way recover his deposit with interest and his costs of investigating the title: *Re Hargreaves & Thompson*, 32 Ch. D. 454; and if he brings an action instead, the extra costs may be disallowed: see *King* v. *Chamberlayn*, W. N. 1887, 158.

CHAPTER VII.

REGISTERED TITLES.

Chap. VII.

Registered title.

In considering a registered title, it must be observed whether the land is on the Registry of Title established by the Land Registry Act, 1862, or on that established by the Land Transfer Act, 1875.

In either case, it appears to be sufficient for the vendor to show a title in himself on the face of the Register, without deducing or proving it in the usual way.

Abstract.

The abstract should accordingly consist of copies of the subsisting entries in the Register: see Dart, 347; and should be verified by inspection of the Register. But where the Register merely refers to an instrument for the estates or interests of the parties, an abstract of such instrument should be furnished and verified.

The Register should be searched for special land certificates, restraints on conveyance, caveats, and notices of unregistered estates.

The production of the land certificate should also be required, as an equitable charge may be created by its deposit.

The principal provisions of the above mentioned Acts, so far as they affect purchasers, are as follows:—

LAND REGISTRY ACT, 1862 (25 & 26 Vict. c. 53).

Land Registry Act, 1862.

While land is on the "Register of Estates with an indefeasible Title," the persons for the time being named n the "Record of Title" are, for the purposes of sale,

deemed to be absolutely entitled to the estates, rights, powers and interests therein expressed (exclusive of mines and minerals), subject to any specified exception, qualification or condition, and to any registered incumbrances, and to any liabilities in the nature of land-tax, tithe, succession duty, easements, and occupation leases not exceeding 21 years (see ss. 9, 20, 27).

Land certificate.

A land certificate under the seal of the Land Registry Office, and signed by the Registrar, is evidence of the entries in the "Register of Estates," the "Record of Title," and the "Register of Incumbrances," at the date of the certificate, and (if so certified) of the land being registered with an indefeasible title (ss. 68, 69, 71).

Special land certificate.

A special land certificate, obtained for the purpose of sale, is conclusive evidence of the title of the registered proprietor as appearing by the "Record of Title," and prevents the registration of any fresh transaction for 14 days from its date, unless delivered up (s. 70).

Transfer.

Land on the Register may be transferred by a statutory disposition, or by indorsement on the land certificate, in the form described in the schedule to the Act (ss. 63, 65, 72).

Any restriction on transfer entered in the Register has to be observed (s. 94).

The transfer is completed by the proper entries being made in the Register (s. 64); and the original transfer is marked so as to give notice of its registration (see s. 75).

Deposit of land certificate.

A deposit of the land certificate has the same effect as a deposit of title deeds of unregistered land (ss. 63, 73).

Unregistered estates.

Land on the Register devolves and may be dealt with by deed or will in the same way as unregistered land; but no equitable mortgage or lien is created by a deposit of title deeds, and no unregistered estate or interest can prevail against the title of a subsequent purchaser for value duly registered (ss. 33, 63, 74). If a caveat has been lodged, however, it must not be disregarded, as the

Caveat.

Chap. VII.

cautioner may, within 21 days after the Registrar's notice, obtain an order protecting his interest (see ss. 98, 99).

Local registries.

The Local Registry Acts in force in 1862 do not apply to land in Middlesex and Yorkshire while on the Register (s. 104).

Removal from register.

The Land Registry Act, 1862, ceases to apply to land when removed from the Register (s. 84), or re-registered under the Land Transfer Act, 1875: see 38 & 39 Vict. c. 87, s. 126.

Land Transfer Act, 1875 (38 & 39 Vict. c. 87).

Land Transfer Act, 1875.

A registered proprietor of freehold or leasehold land can transfer it to a purchaser in the manner prescribed by the rules made in pursuance of the Act (see Gen. Rules of December, 1875, and Land Registry Rules, 1889); the transfer being completed by the purchaser being entered on the Register as proprietor (ss. 29, 34).

Any restriction on transfer entered in the Register has to be observed (s. 59).

Freeholds with absolute title.

If the land is freehold, registered with an absolute title, the transfer passes the fee simple to the purchaser, subject to any registered incumbrances, and to any liabilities in the nature of quit rent, succession duty, land-tax, tithe, easements, rights to mines and minerals, rights of sporting, and occupation leases not exceeding 21 years (see ss. 18, 30).

With qualified title.

The transfer of freehold land registered with a qualified title has the same effect, subject to any right or interest appearing by the Register to be excepted (s. 31).

With possessory title.

The transfer of freehold land registered with a possessory title has the same effect, subject to any subsisting right or interest adverse to or in derogation of the title of the first registered proprietor (s. 32).

Land certificate.

A land certificate under the seal of the Registry Office is evidence of the title being absolute, qualified, or

possessory, as mentioned in the certificate (see ss. 10, 80).

Special certificate.

A special certificate under the seal of the Office is conclusive evidence of the title of the registered proprietor as appearing by the Register, and prevents the registration of any fresh transaction for 14 days from its date, unless delivered up: Gen. Rules of December, 1875, r. 33.

Leaseholds.

If the land is leasehold, registered with a declaration of the lessor's absolute title, the transfer vests the leasehold interest in the purchaser, subject to any registered incumbrances, and to any liabilities in the nature of succession duty, land-tax, tithe, easements, rights to mines and minerals, rights of sporting, and occupation leases not exceeding 21 years (see ss. 18, 35).

The transfer of leasehold land registered with a declaration of the lessor's qualified title, has the same effect, subject to any right or interest appearing by the Register to be excepted (s. 36).

The transfer of leasehold land registered without a declaration of the lessor's title, has the same effect, subject to any estate, right, or interest affecting or in derogation of the lessor's title (s. 37).

The purchaser is entitled to the office copy of the registered lease (s. 34), which is evidence of its contents (s. 80).

Registered charge.

The registered proprietor of a registered charge with a power of sale can, after the appointed time, and subject to any entry to the contrary, sell and transfer the land as if he were the registered proprietor of the land (s. 27).

Deposit of land certificate.

The deposit of the land certificate, or of the office copy of the registered lease, has the same effect in creating a lien as the deposit of the title deeds (s. 81).

Unregistered estates.

Land on the Register can be dealt with in the same

Chap. VII.

way as unregistered land; and unregistered estates are protected by the entry of notices or cautions on the Register (ss. 49, 54).

Local registries.

Land on the Register is exempt from the jurisdiction of the Middlesex and Yorkshire Registries (s. 127).

APPENDIX.

STAMP DUTIES.

The principal statutes by which the Stamp Duties on deeds relating to land have been regulated since 1815 are as follows :—

Stamp Acts.	Deeds charged.
55 Geo. III. c. 184 . .	Deeds generally.
3 Geo. IV. c. 117 . .	Transfers and Reconveyances.
4 & 5 Vict. c. 21 . .	Releases.
7 & 8 Vict. c. 76 . .	Deeds of grant.
8 & 9 Vict. c. 106 . .	Deeds of grant.
13 & 14 Vict. c. 97 . .	Deeds generally.
16 & 17 Vict. c. 59 . .	Conveyances of equities of redemption and Counterpart Leases.
17 & 18 Vict. c. 83 . .	Leases and Duplicates.
23 & 24 Vict. c. 111 .	Assignments and Surrenders of Leases.
24 & 25 Vict. c. 91 . .	Appointments of new trustees and Counterparts.
28 & 29 Vict. c. 96 . .	Conveyances and Transfers.
33 & 34 Vict. c. 97 . .	Deeds generally.
39 & 40 Vict. c. 16 . .	Deeds increasing rent.
46 & 47 Vict. c. 55 . .	Mortgages not exceeding £10.
51 Vict. c. 8 . . .	Equitable mortgages.
52 & 53 Vict. c. 42 . .	Conveyances of equitable interests.

The dates on which these Acts came into operation are given in the following tables: each Act takes effect from the commencement of the day named (see *Tomlinson* v. *Bullock*, 4 Q. B. D. 232), repealing the duties previously payable in respect of the deeds charged thereby.

Stamps on Appointments.

55 Geo. III. c. 184.

Appointment—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
Of a new trustee, or of any property under a power	35*s.*
Progressive duty—up to 10th Oct., 1850 . . .	25*s.*
" " —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*
And after 6th Aug., 1861, where on the appointment of a new trustee several deeds were executed for vesting the trust property, if one was stamped with £1 15*s.*, the others were sufficiently stamped as duplicates (*i.e.*, with 5*s.* and progressive duty and a denoting stamp) : 24 & 25 Vict. c. 91, s. 30 ; see *Foley* v. *Comrs. of In. Rev.*, L. R. 3 Ex. 263.	

33 & 34 Vict. c. 97.

Appointment—from 1st Jan., 1871.	Duty.
Of a new trustee, or of any property under a power	10*s.*
No progressive duty.	
The conveyance of the estate to the new trustee is also chargeable with a separate duty of 10*s.*, although contained in the same deed (ss. 8 and 78) ; *Hadgett* v. *Comrs. of In. Rev.*, 3 Ex. D. 46.	

Stamps on Conveyances on Sale.

55 Geo. III. c. 184.

Conveyance—from 1st Sept., 1815, to 10th Oct., 1850.	Duty. £	s.	d.
For a consideration not amounting to £20	0	10	0
Amounting to £20 and not amounting to £50	1	0	0
„ £50 „ „ £150	1	10	0
„ £150 „ „ £300	2	0	0
„ £300 „ „ £500	3	0	0
„ £500 „ „ £750	6	0	0
„ £750 „ „ £1,000	9	0	0
„ £1,000 „ „ £2,000	12	0	0
„ £2,000 „ „ £3,000	25	0	0
„ £3,000 „ „ £4,000	35	0	0
„ £4,000 „ „ £5,000	45	0	0
„ £5,000 „ „ £6,000	55	0	0
„ £6,000 „ „ £7,000	65	0	0
„ £7,000 „ „ £8,000	75	0	0
„ £8,000 „ „ £9,000	85	0	0
„ £9,000 „ „ £10,000	95	0	0
„ £10,000 „ „ £12,500	110	0	0
„ £12,500 „ „ £15,000	130	0	0
„ £15,000 „ „ £20,000	170	0	0
„ £20,000 „ „ £30,000	240	0	0
„ £30,000 „ „ £40,000	350	0	0
„ £40,000 „ „ £50,000	450	0	0
„ £50,000 „ „ £60,000	550	0	0
„ £60,000 „ „ £80,000	650	0	0
„ £80,000 „ „ £100,000	800	0	0
„ £100,000, or upwards	1000	0	0
And a conveyance of freeholds by deed of feoffment or bargain and sale enrolled, without a lease and release (55 Geo. III. c. 184), or by release without a lease for a year (4 & 5 Vict. c. 21, s. 1), or by deed of grant (7 & 8 Vict. c. 76, s. 2; 8 & 9 Vict. c. 106, s. 2), was also charged with the duty payable on a bargain and sale or lease for a year, viz.,			
For a consideration under £20	0	10	0
Amounting to £20 and not amounting to £50	0	15	0
„ £50 „ „ £150	1	0	0
„ £150 or upwards	1	15	0
But this further duty did not attach where there was also a bargain and sale enrolled.			
Progressive duty	1	0	0
The conveyance of an equity of redemption was charged with duty in respect of the mortgage debt, if the purchaser agreed to pay it; see 16 & 17 Vict. c. 59, s. 10.			

Stamps on Conveyances on Sale.

13 & 14 Vict. c. 97.

Conveyance—from 11th Oct., 1850, to 4th July, 1865.	Duty.		
	£	s.	d.
For a consideration not exceeding £25	0	2	6
Exceeding £25 and not exceeding £50	0	5	0
„ £50 „ „ £75	0	7	6
„ £75 „ „ £100	0	10	0
„ £100 „ „ £125	0	12	6
„ £125 „ „ £150	0	15	0
„ £150 „ „ £175	0	17	6
„ £175 „ „ £200	1	0	0
„ £200 „ „ £225	1	2	6
„ £225 „ „ £250	1	5	0
„ £250 „ „ £275	1	7	6
„ £275 „ „ £300	1	10	0
„ £300 „ „ £350	1	15	0
„ £350 „ „ £400	2	0	0
„ £400 „ „ £450	2	5	0
„ £450 „ „ £500	2	10	0
„ £500 „ „ £550	2	15	0
„ £550 „ „ £600	3	0	0
„ £600, then for every £100 and also for any fractional part of £100	0	10	0
Progressive duty equal to the *ad valorem* duty if under 10s., and in other cases	0	10	0
The conveyance of an equity of redemption was charged with duty in respect of the mortgage debt if the purchaser agreed to pay it, and after 11th Oct., 1853, whether agreed to be paid by him or not; 16 & 17 Vict. c. 59, s. 10.			

Stamps on Conveyances on Sale.

28 & 29 Vict. c. 96.

Conveyance—from 5th July, 1865, to 31st Dec., 1870.	Duty.		
	£	s.	d.
For a consideration not exceeding £5 . . .	0	0	6
Exceeding £5 and not exceeding £10	0	1	0
„ £10 „ „ £15	0	1	6
„ £15 „ „ £20	0	2	0
„ £20 „ „ £25	0	2	6
„ £25 „ „ £50	0	5	0
„ £50 „ „ £75	0	7	6
„ £75 „ „ £100	0	10	0
„ £100 „ „ £125	0	12	6
„ £125 „ „ £150	0	15	0
„ £150 „ „ £175	0	17	6
„ £175 „ „ £200	1	0	0
„ £200 „ „ £225	1	2	6
„ £225 „ „ £250	1	5	0
„ £250 „ „ £275	1	7	6
„ £275 „ „ £300	1	10	0
„ £300, then for every £50 and also for any fractional part of £50	0	5	0
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31)	0	10	0
The conveyance of an equity of redemption was charged with duty in respect of the mortgage debt; 16 & 17 Vict. c. 59, s. 10.			

Stamps on Conveyances on Sale.

33 & 34 Vict. c. 97.

Conveyance—from 1st Jan., 1871.	Duty. £	s.	d.
For a consideration not exceeding £5	0	0	6
Exceeding £5 and not exceeding £10	0	1	0
„ £10 „ „ £15	0	1	6
„ £15 „ „ £20	0	2	0
„ £20 „ „ £25	0	2	6
„ £25 „ „ £50	0	5	0
„ £50 „ „ £75	0	7	6
„ £75 „ „ £100	0	10	0
„ £100 „ „ £125	0	12	6
„ £125 „ „ £150	0	15	0
„ £150 „ „ £175	0	17	6
„ £175 „ „ £200	1	0	0
„ £200 „ „ £225	1	2	6
„ £225 „ „ £250	1	5	0
„ £250 „ „ £275	1	7	6
„ £275 „ „ £300	1	10	0
„ £300, for every £50 and also for any fractional part of £50	0	5	0
As to what forms part of the consideration, see *Comrs. of In. Rev.* v. *Glasgow, &c. R. Co.*, 12 App. Cas. 315.			
No progressive duty.			
The conveyance of an equity of redemption is charged with duty in respect of the mortgage-debt (s. 73).			
A conveyance carrying out a contract for sale of an equitable interest, entered into since 31st May, 1889, may be stamped either with the *ad valorem* duty or with a denoting stamp showing that the duty has been paid on the contract; 52 & 53 Vict. c. 42, s. 15.			

Stamps on Deeds not otherwise charged.

55 Geo. III. c. 184.

Deed not otherwise charged—from 1st Sept. 1815, to 31st Dec., 1870.	Duty.
Irrespective of the consideration	35*s.*
Progressive duty—up to 10th Oct, 1850 . . .	25*s.*
„ „ —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*

33 & 34 Vict. c. 97.

Deed not otherwise charged—from 1st Jan., 1871.	Duty.
Irrespective of the consideration . . . . . No progressive duty.	10*s.*

Stamps on Exchange Deeds.

55 Geo. III. c. 184.

Exchange—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
(1.) If no money or less than £300 was paid or agreed to be paid for equality . . .	35*s.*
(2.) If £300 or upwards were paid or agreed to be paid for equality	Same as a conveyance on sale for an equal sum.
Progressive duty—up to 10th Oct., 1850 :	
If the deed was liable to the duty of £1 15*s.*	25*s.*
If liable to a higher duty	20*s.*
Progressive duty—from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*
Duplicate—up to 10th Oct., 1850 . . .	Same as original.
„ —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	5*s.*, and progressive duty of 2*s.* 6*d.* and denoting stamp.

33 & 34 Vict. c. 97.

Exchange—from 1st Jan., 1871.	Duty.
(1.) Where more than £100 is paid or agreed to be paid for equality	Same as a conveyance on sale for such sum.
(2.) In any other case	10s.
Duplicate	5s. and denoting stamp.
No progressive duty.	

STAMPS ON LEASES.

55 Geo. III. c. 184.

Lease—from 1st Sept., 1815, to 10th Oct., 1850.	Duty.
(1.) If for a fine, with no rent or with any yearly rent under £20	Same as a conveyance on sale for the same amount.
(2.) If no fine but a yearly rent under . £20	£ s. d. 1 0 0
Amounting to £20 and not amounting to £100	1 10 0
„ £100 „ „ £200	2 0 0
„ £200 „ „ £400	3 0 0
„ £400 „ „ £600	4 0 0
„ £600 „ „ £800	5 0 0
„ £800 „ „ £1,000	6 0 0
„ £1,000 or upwards	10 0 0
(3.) If for a fine and also a yearly rent of £20 or upwards	Both the duties payable in respect of the fine and the rent.
(4.) If of any other kind	35s.
Progressive duty	20s.
Counterpart of a Lease charged with a duty not exceeding £1	Same as the lease (including progressive duty).
Counterpart of any other lease . . .	30s., and progressive duty.
Leases made before 20th March, 1850, were exempt from duty in respect of money paid by the lessee to any other person than the lessor; 13 & 14 Vict. c. 97, s. 10.	

13 & 14 Vict. c. 97.

Lease—from 11th Oct., 1850, to 31st Dec., 1870 (subject to alterations of 17 & 18 Vict. c. 83.)	Duty.
(1.) If for a fine, with no rent or with any yearly rent under £20	Same as a conveyance on sale for the same amount.
(2.) If no fine, but a yearly rent not exceeding £5	£ s. d. 0 0 6
Exceeding £5 and not exceeding £10 . .	0 1 0
„ £10 „ „ £15. . .	0 1 6
„ £15 „ „ £20 . .	0 2 0
„ £20 „ „ £25. . .	0 2 6
„ £25 „ „ £50 . .	0 5 0
„ £50 „ „ £75. . .	0 7 6
„ £75 „ „ £100 . .	0 10 0
„ £100, then for every £50 and also for any fractional part of £50 . .	0 5 0
(3.) If for a fine, and also a yearly rent of £20 or upwards	Both the duties payable in respect of the fine and the rent.
(4.) If of any kind not otherwise charged . .	35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases . .	10*s.*
Counterpart of a Lease charged with *ad valorem* duty not amounting to 5*s.* . .	Same as the lease (including progressive duty).
Counterpart of a Lease charged with *ad valorem* duty amounting to 5*s.* or upwards	5*s.*, and progressive duty of 2*s.* 6*d.*
A denoting stamp was also required in the latter case, except as to counterparts after 11th Oct., 1853, not executed or signed by or on behalf of any lessor or grantor; see 16 & 17 Vict. c. 59, s. 12.	

17 & 18 Vict. c. 83.

Lease for more than 35 years—from 11th Oct., 1854, to 31st Dec., 1870.	Duty.	
	Term not exceeding 100 years.	Term exceeding 100 years.
	£ s. d.	£ s. d.
In respect of a yearly rent not exceeding £5	0 3 0	0 6 0
Exceeding £ 5 and not exceeding £10	0 6 0	0 12 0
„ £10 „ „ £15	0 9 0	0 18 0
„ £15 „ „ £20	0 12 0	1 4 0
„ £20 „ „ £25	0 15 0	1 10 0
„ £25 „ „ £50	1 10 0	3 0 0
„ £50 „ „ £75	2 5 0	4 10 0
„ £75 „ „ £100	3 0 0	6 0 0
„ £100, then for every £50, and also for any fractional part of £50	1 10 0	3 0 0
In respect of a fine, forming part of the consideration, in addition to a yearly rent	Same as a conveyance for the same amount, under 13 & 14 Vict. c. 97.	
Progressive duty, equal to the *ad valorem* duty, if under 10*s.* and in other cases (see 13 & 14 Vict. c. 97) . . .	10*s.*	
Counterparts were charged with the duties imposed by 13 & 14 Vict. c. 97: see p. 115.		
Leases did not come within this Act, unless a rent was payable for a term exceeding 35 years. *Pearson* v. *Comrs. of In. Rev.*, L. R. 3 Ex. 242.		
No duty was payable in respect of a covenant to improve the property: see 33 & 34 Vict. c. 44.		

33 & 34 Vict. c. 97.

Lease—from 1st Jan., 1871.	Duty.
	£ s. d.
(1.) For any definite term less than a year :—	
(*a*) Of a house at a rent not exceeding £10 per annum	0 0 1
(*b*) Of any furnished house at a rent for such term exceeding £25 . . .	0 2 6
(*c*) Of any lands otherwise than as aforesaid	Same as a lease for a year, at the same rent.
(2.) For any other term :—	
In respect of a money consideration .	Same as a conveyance on sale for the same amount.

In respect of rent :—	Term not exceeding 35 years, or indefinite (v. i.).	Term exceeding 35, but not exceeding 100 years.	Term exceeding 100 years.
	£ s. d.	£ s. d.	£ s. d.
not exceeding £5 per annum . .	0 0 6	0 3 0	0 6 0
exceeding £5 and not exceeding £10	0 1 0	0 6 0	0 12 0
„ 10 „ „ 15	0 1 6	0 9 0	0 18 0
„ 15 „ „ 20	0 2 0	0 12 0	1 4 0
„ 20 „ „ 25	0 2 6	0 15 0	1 10 0
„ 25 „ „ 50	0 5 0	1 10 0	3 0 0
„ 50 „ „ 75	0 7 6	2 5 0	4 10 0
„ 75 „ „ 100	0 10 0	3 0 0	6 0 0
„ 100, for every £50, and also for any fractional part of £50	0 5 0	1 10 0	3 0 0

(3.) Of any other kind	10*s.*
An agreement for a lease not exceeding 35 years is charged as an actual lease.	
But a lease carrying out such an agreement duly stamped, is charged with the duty of 6*d.* only (s. 96).	
No duty is payable in respect of a penal rent or of a covenant to improve the property (s. 98).	
No progressive duty.	

Appendix.

Lease—from 1st Jan., 1871 (*continued*).	Duty.
Counterpart lease: same duty as the lease if less than 5*s.*, and in any other case The counterpart (unless stamped as the lease) also requires a denoting stamp if executed by or on behalf of any lessor or grantor (s. 93). Instruments increasing rent are charged as leases at the additional rent: see 39 & 40 Vict. c. 16, s. 11.	5*s.*

Stamps on Assignments and Surrenders.

55 Geo. III. c. 184.

Assignment or Surrender—from 1st Sept., 1815, to 10th Oct., 1850.	Duty.
Of any term of years, except on sale or mortgage . . Progressive duty	35*s.* 25*s.*

13 & 14 Vict. c. 97.

Assignment or Surrender—from 11th Oct., 1850, to 31st Dec., 1870 (subject to alterations of 23 & 24 Vict. c. 111).	Duty.
Of any lease, except on sale or mortgage . .	Same as a similar lease, but not exceeding 35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases . .	10*s.*

23 & 24 Vict. c. 111.

Assignment or Surrender—from 29th Aug., 1860, to 31st Dec., 1870.	Duty.
Of a lease for more than 35 years, except on sale or mortgage	Same as a similar lease, but not exceeding 35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31)	10*s.*

33 & 34 Vict. c. 97.

Assignment or Surrender – from 1st Jan., 1871.	Duty.
If not chargeable as a conveyance on sale or mortgage No progressive duty.	10*s.*

STAMPS ON MORTGAGES.

55 Geo. III. c. 184.

Mortgage—from 1st Sept., 1815, to 10th Oct., 1850.	Duty.		
	£	*s.*	*d.*
(1.) For a definite sum, or for future advances with a limit:			
Not exceeding £50	1	0	0
Exceeding £50 and not exceeding £100 . . .	1	10	0
„ £100 „ „ £200 . . .	2	0	0
„ £200 „ „ £300 . . .	3	0	0
„ £300 „ „ £500 . .	4	0	0
„ £500 „ „ £1,000 . . .	5	0	0
„ £1,000 „ „ £2,000 . . .	6	0	0
„ £2,000 „ „ £3,000 . . .	7	0	0
„ £3,000 „ „ £4,000 . . .	8	0	0
„ £4,000 „ „ £5,000 . . .	9	0	0
„ £5,000 „ „ £10,000 . . .	12	0	0
„ £10,000 „ „ £15,000 . . .	15	0	0
„ £15,000 „ „ £20,000 . . .	20	0	0
„ £20,000	25	0	0
(2.) For future advances of an uncertain amount and without any limit.	25	0	0
Progressive duty	1	0	0

13 & 14 Vict. c. 97.

Mortgage—from 11th Oct., 1850, to 31st Dec., 1870.	Duty.		
(1.) For a definite sum, or for future advances with a limit:	£	s.	d.
Not exceeding £50	0	1	3
Exceeding £50 and not exceeding £100	0	2	6
„ £100 „ „ £150	0	3	9
„ £150 „ „ £200	0	5	0
„ £200 „ „ £250	0	6	3
„ £250 „ „ £300	0	7	6
„ £300, then for every £100 and also for any fractional part of £100	0	2	6
(2.) For future advances of an uncertain amount and without any limit, it was available as a security for the amount covered by the stamp.			
(3.) An additional security or further assurance was charged with the same duty as the mortgage where the amount secured did not exceed £1,400, and in any other case	1	15	0
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases	0	10	0

33 & 34 Vict. c. 97.

Mortgage—from 1st Jan., 1871 (subject to alterations of 46 & 47 Vict. c. 55, and 51 Vict. c. 8).	Duty.		
(1.) For a definite sum or for future advances with a limit:	£	s.	d.
Not exceeding £25	0	0	8
Exceeding £25 and not exceeding £50	0	1	3
„ £50 „ „ £100	0	2	6
„ £100 „ „ £150	0	3	9
„ £150 „ „ £200	0	5	0
„ £200 „ „ £250	0	6	3
„ £250 „ „ £300	0	7	6
„ £300, for every £100 and also for any fractional part of £100	0	2	6
(2.) For future advances of an unlimited amount, the security is available for the amount covered by the stamp (s. 107).			
(3.) Being a collateral or substituted security, or further assurance; For every £100 and also for any fractional part of £100 of the amount secured	0	0	6
No progressive duty.			

46 & 47 Vict. c. 55, s. 15.

Mortgage—from 25th Aug., 1883.	Duty.
Being a security for money not exceeding £10 . .	3*d.*

51 Vict. c. 8, s. 15.

Equitable Mortgages not under seal— from 16th May, 1888.	Duty.
For every £100 and any fractional part of £100 . And where the amount secured is unlimited in the first instance, a fresh stamp is required when any advance is made in excess of the amount covered by the duty impressed thereon.	1*s.*

STAMPS ON TRANSFERS OF MORTGAGES.

3 Geo. IV. c. 117.

Transfer—from 15th Aug., 1822, to 10th Oct., 1850.	Duty.
(1.) If no further advance	35*s.*
Progressive duty	25*s.*
(2.) If any further advance, the *ad valorem* duty on mortgages payable under 55 Geo. III. c. 184 was charged, but only in respect of such further advance.	
Progressive duty	20*s.*
A fresh covenant for payment and proviso for redemption by the mortgagor did not subject a transfer to any further duty (see 13 & 14 Vict. c. 97, s. 9).	

13 & 14 Vict. c. 97.

Transfer from 11th Oct., 1850, to 4th July, 1865.	Duty.
(1.) Where no further advance :—	
If the principal did not exceed £1,400 .	Same as a mortgage for the same amount.
If the principal exceeded £1,400 . .	35*s.*
(2.) Where any further advance . . .	Same as a mortgage for such further advance only.
(3.) In any other case	35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases . . .	10*s.*
No further duty was charged in respect of any fresh covenant or proviso for redemption.	
And after 6th Aug., 1861, where the mortgage was part of trust property and the transfer was made upon the appointment of a new trustee, and the remaining trust property was transferred by a separate deed, stamped with £1 15*s.*, the transfer was sufficiently stamped as a duplicate (*i.e.* with 5*s.* and progressive duty and a denoting stamp), 24 & 25 Vict. c. 91, s. 30.	

28 & 29 Vict. c. 96.

Transfer—from 5th July, 1865, to 31st Dec., 1870.	Duty.
For every £100 or any fractional part of £100 of the principal already secured . . .	6*d.*
And also for any further advance . . .	Same as a mortgage for such further advance.
Progressive duty, equal to the *ad valorem* duty if under 10*s.*, and in other cases (see 24 & 25 Vict. c. 91, s. 31)	10*s.*
This Act did not take away the privilege conferred by 24 & 25 Vict. c. 91, s. 30 (*v. s.*); see *Foley* v. *Comrs. of In. Rev.*, L. R. 3 Ex. 263.	

33 & 34 Vict. c. 97.

Transfer—from 1st Jan., 1871.	Duty.
For every £100 and also for any fractional part of £100 of the amount transferred	6*d.*
And also for any further advance . . .	Same as a principal security for such further advance.
No progressive duty. A fresh covenant for payment and a fresh proviso for redemption do not subject a transfer to any further duty (s. 109); *Wale* v. *Comrs. of In. Rev.*, 4 Ex. D. 270; Conv. Act, 1881, s. 27.	

STAMPS ON RECONVEYANCES OF MORTGAGES.

3 Geo. IV. c. 117.

Reconveyance—from 15th Aug., 1822, to 10th Oct., 1850.	Duty.
In any case	35*s.*

13 & 14 Vict. c. 97.

Reconveyance—from 11th Oct., 1850, to 31st Dec., 1870.	Duty.
(1.) Where the total amount at any time secured did not exceed £1,400 . . .	Same as a mortgage for the same amount.
(2.) In any other case	35*s.*
Progressive duty equal to the *ad valorem* duty if under 10*s.*, and in other cases . .	10*s.*

33 & 34 Vict. c. 97.

Reconveyance—from 1st Jan., 1871.	Duty.
For every £100 and also for any fractional part of £100 of the total amount at any time secured . No progressive duty.	6*d.*

STAMPS ON PARTITION DEEDS.

55 Geo. III. c. 184.

Partition—from 1st Sept., 1815, up to 31st Dec., 1870.	Duty.
(1.) If no money or less than £300 was paid or agreed to be paid for equality . . .	35*s.*
(2.) If £300 or upwards were paid or agreed to be paid for equality	Same as a conveyance on sale for an equal sum.
Progressive duty—up to 10th Oct., 1850:	
If the deed was liable to the duty of 35*s.*	25*s.*
If liable to a higher duty	20*s.*
Progressive duty—from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*
Duplicate—up to 10th Oct., 1850 . . .	Same as original.
„ —from 11th Oct., 1850 (13 & 14 Vict. c. 97)	5*s.*, and progressive duty of 2*s.* 6*d.* and denoting stamp.

33 & 34 Vict. c. 97.

Partition—from 1st Jan., 1871.	Duty.
(1.) Where more than £100 is paid or agreed to be paid for equality	Same as a conveyance on sale for such sum.
(2.) In any other case	10*s.*
Duplicate	5*s.*, and denoting stamp.
No progressive duty.	

Stamps on Releases.

55 Geo. III. c. 184.

Release—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
If not chargeable as a conveyance on sale or mortgage	35*s.*
Progressive duty—up to 10th Oct., 1850 . . .	25*s.*
— from 11th Oct., 1850 (13 & 14 Vict. c. 97)	10*s.*

33 & 34 Vict. c. 97.

Release—from 1st Jan., 1871.	Duty.
If not chargeable as a conveyance on sale or mortgage No progressive duty.	10*s.*

Stamps on Settlements.

55 Geo. III. c. 184.

Settlement—from 1st Sept., 1815, to 31st Dec., 1870.	Duty.
Being a conveyance of land without any pecuniary consideration.	35*s.*
Progressive duty—up to 10th Oct., 1850 . . .	25*s.*
— from 11th Oct., 1850 (13 & 14 Vict. c. 97) .	10*s.*
See *Re Stucley*, L. R. 5 Ex. 85.	

33 & 34 Vict. c. 97.

Settlement—from 1st Jan., 1871.	Duty.
Being a conveyance of land without any pecuniary consideration	10*s.*
No progressive duty.	

INDEX.

THE END.

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